



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes OPR, MNR, MNSD, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord to obtain a Monetary Order for unpaid rent and to recover the cost of the filing fee. The landlord also applied to keep all or part of the security deposit. At the outset of the hearing the landlord stated that the tenants have moved out and therefore withdraws her application for an Order of Possession.

Service of the hearing documents, by the landlord's agent to the tenants, was done in accordance with section 89 of the *Act*. They were given in person to the tenants on October 08, 2009.

The landlord's agent appeared, gave affirmed testimony, was provided the opportunity to present her evidence orally, in writing, and in documentary form. There was no appearance for the tenants, despite being served notice of this hearing in accordance with the *Residential Tenancy Act*. All of the testimony and documentary evidence was carefully considered.

Issues(s) to be Decided

- Are there arrears of rent and if so, how much?
- Is the landlord entitled to keep all or part of the security deposit and interest?
- Whether the landlord is entitled to a Monetary Order to recover the unpaid rent and filing fee?

Background and Evidence

This tenancy started on December 01, 2008. This was a fixed term tenancy for one year until December 01, 2009. Rent is \$873.00 per month due on the 1st of each month. The tenants took over the tenancy from the tenants' mother who was previously residing at the rental unit with one of the tenants. The tenants paid a security deposit of \$380.00 on December 01, 2008.

The tenants did not pay rent for September, 2009 of \$873.00 when the rent cheque was returned to the landlord due to insufficient funds in the tenants account. The tenants attempted to give the

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landlord another cheque but the landlord requested that they pay by another means due to the previous returned cheque. The tenants did not pay the rent by another means and the landlord issued a 10 Day Notice to End the Tenancy for unpaid rent on September 21, 2009. This was given personally to the tenants and was deemed to have been served on the same day. The tenant had five days to either pay the outstanding rent or apply for Dispute Resolution or the tenancy would end on September 21, 2009. The tenants did not pay the outstanding rent or dispute the Notice within five days. The landlord testifies that the tenants have not paid rent for October, 2009 of \$873.00. The total amount of rent arrears are \$1,746.00. The landlord has also incurred an additional charge of \$25.00 for the returned cheque.

At the hearing the landlord's agent also applied for a loss of income for November's rent and damages to the rental unit. These damages have come to her attention since the tenants have moved out of the property and after the landlords' agent made her application for Dispute Resolution. In light of this the landlord is at liberty to reapply for damages and for compensation for damage or loss under the *Act*.

The landlord has asked for an Order for Substitute Service as the tenants have not given her a forwarding address. The landlord has requested that she may be allowed to serve one of the tenants on behalf of both tenants at the female tenants' place of work.

Analysis

The tenants did not appear at the hearing, despite having been served a Notice of the hearing in person; therefore, in the absence of any evidence from the tenants, I find that the landlord is entitled to recover rent arrears for September and October, 2009 of \$1,746.00. I order the landlord pursuant to s. 38(4) of the *Act* to keep the tenant's security deposit in partial payment of the rent arrears.

As the landlord has been largely successful in this matter, they are entitled to recover the \$50.00 filing fee for this proceeding pursuant to s. 72(1) of the *Act*.

The landlord will receive a monetary order for the balance owing as follows:

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| Outstanding rent for September and October, 2009 | \$1,746.00 |
|--|------------|

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| Filing fee | \$50.00 |
| Less security deposit and accrued interest | (-\$380.48) |
| Total amount due to the landlord | \$1,440.52 |

I find the landlord is entitled to an Order for Substitute Service based on the fact that the tenants have moved and not given her a forwarding address to enable her to serve them with the Monetary Order. I find that the circumstances are appropriate to order that the applicant may serve the documents by an alternate method.

Conclusion

I HEREBY FIND in favor of the landlord's monetary claim. A copy of the landlord's decision will be accompanied by a Monetary Order for **\$1,440.52**. The order must be served on the respondent and is enforceable through the Provincial Court as an order of that Court.

I therefore ORDER, pursuant to section 71(1)(2) of the Residential Tenancy Act, that the Monetary Order may be served on the female tenant on behalf of both respondents by serving the respondent at her place of work. The documents shall be deemed to have been sufficiently given to the respondent(s) for the purposes of the Act if they are served as ordered. A copy of the Order for Substitute Service must be served with this decision and Monetary Order.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: November 20, 2009.

Dispute Resolution Officer