



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 matter dealt with an application by the landlord for an Order of Possession, a Monetary Order for unpaid rent and to recover the filing fee for this proceeding. The landlord also applied to keep all or part of the security deposit. At the outset of the hearing the landlord confirmed that the tenant has moved out and as a result she has abandoned her application for an Order of Possession.

Service of the hearing documents was done in accordance with section 89 of the *Act*. They were sent to the tenant by registered mail on October 08, 2009. The tenant confirmed he had received them.

Both parties appeared, gave their testimony, were provided the opportunity to present evidence, make submissions and to cross-examine the other party. On the basis of the solemnly affirmed evidence presented at the hearing I have determined:

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

The landlord and tenant both agree that the tenancy started on April 01, 2009. Rent for this unit was \$550.00 per month and was due on the first of each month. The tenant paid a security deposit of \$275.00 on April 01, 2009.

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The landlord testifies that the tenant did not pay all the rent for September, 2009 and owed a balance of \$300.00. On October 01, 2009 the tenant failed to pay the rent of \$550.00 and the landlord issued the tenant with a 10 Day Notice to End Tenancy for unpaid rent at 8.00pm on October 01, 2009. The tenant had five days to pay the outstanding rent of \$850.00, apply for dispute resolution or the tenancy would end on October 10, 2009. The landlord testifies that the tenant did not pay the rent and moved from the rental unit on October 10, 2009.

The tenant testifies that he did attempt to give the landlord \$500.00 towards the outstanding rent but she refused to accept this as she wanted all the outstanding rent. The tenant claims the landlord entered his unit without his permission on October 09, 2009 and changed the locks. The tenant claims the landlord invaded his privacy and left him with nowhere to live.

The landlord claims she had to enter the rental unit as the tenant had not been around for over one week and she could hear his cat crying inside the unit. She was also concerned that there was no heat to the unit and was worried about this causing damage to the unit with the impending cold weather. The landlord claims when she tried to enter the unit the locks had been changed and she had to pay for a locksmith to come and change the locks so she could enter the rental unit. The landlord claims that she lives on the site and the tenant could have come to get a new key from her on his return.

The tenant disputes this he claims he did not change the locks and suggests that the landlord did not use the right keys when she attempted to enter his unit.

Analysis

Based on the testimony and evidence of both parties, I find that the landlord has established her claim for unpaid rent. Section 26 of the *Act* states:

26 (1) A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the

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regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

Therefore, I find that the landlord is entitled to recover rent arrears for September and October 2009, of \$850.00 pursuant to section 67 of the *Act*. Section 26 of the *Act* also states:

- (3) Whether or not a tenant pays rent in accordance with the tenancy agreement, a landlord must not
- (a) seize any personal property of the tenant, or
 - (b) prevent or interfere with the tenant's access to the tenant's personal property.

In this instance I find that the landlord believed that an animal was in danger and her property may be at potentially risk without heat in the cold weather. Based on the evidence, testimony and balance of probabilities I find I prefer the evidence of the landlord as to her reasons given as to why she changed the locks on the rental unit. I find that as the landlord incurred additional costs to change the locks she would not have done so if she had been able to enter with a key. I find that pursuant to section 29 (1)(f) a landlord is entitled to enter a rental unit if an emergency exists and entry is necessary to protect life or property. Therefore, although the landlord did change the locks on the unit the tenant could have contacted her for a new key as the landlord lives on the site and was readily available.

As the landlord has been successful in this matter, she is also entitled to recover the \$50.00 filing fee for this proceeding pursuant to s. 72(1) of the *Act*. The landlord is entitled to keep the tenants security deposit in partial satisfaction of her claim. The landlord will receive a monetary order for the balance owing as follows:

Outstanding rent for September and October, 2009	\$850.00
Less security deposit	(-\$275.00)
Total amount due to the landlord	\$625.00



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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 **\$625.00**. The order must be served on the tenants and is enforceable through the Provincial Court as an order of that Court.

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 23, 2009.

Dispute Resolution Officer