



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 was reconvened to hear the landlord's request for monetary compensation pursuant to a Direct Request decision issued December 10, 2009. The landlord testified that he personally served the tenant with notification of this hearing at his place of work. An agent appeared on behalf of the tenant and affirmed the tenant had been notified of this hearing. Both parties were provided the opportunity to be heard and respond to the other party's submissions.

As a preliminary matter, the tenancy agreement identified two tenants; however, only one tenant signed the agreement. Both parties consented to amending the landlord's application to name only the tenant that signed the tenancy agreement. This decision and accompanying order have been amended accordingly.

This hearing only pertains to the landlord's monetary claim as the landlord was previously issued an Order of Possession with the December 10, 2009 decision and the tenant has already vacated the rental unit.

Issues(s) to be Decided

1. Has the landlord established an entitlement to monetary compensation from the tenant, and if so, the amount?
2. Mutual agreement between the parties.
3. Retention of the security deposit.
4. Award of the filing fee.

Background and Evidence

Based upon the undisputed testimony and the documentary evidence before me, I make the following findings. The tenancy commenced April 15, 2009 and the tenant paid a \$700.00 security deposit on March 30, 2009. The tenancy agreement required the tenant to pay rent of \$1,400.00 per month plus $\frac{3}{4}$ of the hydro and gas bills to the landlord. The rent cheque for October 2009 was returned NSF and the tenant subsequently paid that amount. The tenant put a stop payment on the rent cheque for November 2009.

The parties provided disputed testimony as to when the tenant vacated the rental unit. The landlord testified that the rental unit was vacated December 1, 2009 whereas the tenant's agent testified that the unit was vacated on November 27, 2009.

In making this application, the landlord requested unpaid rent for November 2009 in the amount of \$1,400.00 and $\frac{3}{4}$ of the gas and utility bills for April 15, 2009 through October 2, 2009. The landlord testified that he provided the tenant with a copy of the utility bills by leaving a copy in the mailbox on October 24, 2009 and indicating the tenant's portion of the bills to be \$609.87. The landlord also stated that bills for the period after October 2, 2009 had not been received at the time of making this application. During the hearing, the landlord withdrew his request for a \$50.00 NSF fee.

The tenant's agent testified that when the tenancy agreement was signed the basement suite was occupied by a single person but approximately one month later the basement suite was rented to a family of four. The tenant's agent submitted that the requirement to pay $\frac{3}{4}$ of the utility bills was unfair given the number of people occupying the other unit. The tenant's agent also pointed out that the landlord should have provided utility bills more frequently as holding the bills for six months created a large bill that the tenant could not afford to pay all at once. The tenant's agent proposed that the 55% of the utility bills would be a fair representation of the utilities consumed by the tenant.

The landlord agreed to accept the tenant's agent's proposal and the parties reached a mutual agreement to resolve this dispute which I record as follows:

1. The tenant will pay the landlord for unpaid rent for November 2009 in the amount of \$1,400.00.
2. The tenant will pay the landlord 55% of the utility bills for the period of time the tenant occupied the rental unit.

Analysis

I accept the mutual agreement reached between the parties during the hearing and make it an order to be binding upon both parties.

I further award the filing fee to the landlord and authorize the landlord to retain the tenant's security deposit in partial satisfaction of the rent owed.

In recognition of the mutual agreement reached between the parties and the above orders, I provide the landlord with a Monetary Order calculated as follows:

Unpaid rent – November 2009	\$ 1,400.00
55% of utility bills April 15 – October 2, 2009	477.24
Filing fee	50.00
Less: security deposit	<u>(700.00)</u>
Monetary Order for landlord	\$ 1,227.24

The landlord must serve the tenant with the Monetary Order and may file it in Provincial Court (Small Claims) to enforce it as an Order of that court.

The landlord retains the right to request payment of 55% of the utilities incurred between October 2, 2009 and the date the tenant vacated the property.

Conclusion

The parties resolved this dispute by mutual agreement. The landlord has been authorized to retain the tenant's security deposit and has been provided a Monetary Order in the amount \$1,227.24 to serve upon the tenant. The landlord retains the right to seek payment for 55% of utilities incurred between October 2, 2009 and the date the tenant vacated the rental unit.

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: January 27, 2010.

Dispute Resolution Officer