

DECISION

Dispute Codes OPR, OPC, MND, MNR, MNSD, FF

Introduction

This hearing dealt with the landlord's request for an Order of Possession for unpaid rent and cause; for a Monetary Order for unpaid rent, damage to the rental unit; authorization to retain the security deposit; and, recovery of the filing fee. The landlord was represented by an agent at the hearing and the agent is also referred to as the landlord in this decision. The tenant did not appear at the hearing. The landlord testified that the tenant was notified of this hearing by personal service on January 17, 2010 in the presence of a witness. I was satisfied the tenant was sufficiently notified of this hearing and I proceeded to hear from the landlord without the tenant present.

At the commencement of the hearing, the landlord testified the tenant vacated the rental unit January 31, 2010 and withdrew the request for an Order of Possession. Accordingly, I do not provide an Order of Possession with this decision.

Issues(s) to be Decided

1. Has the landlord established an entitlement to compensation from the tenant for unpaid rent and damage to the rental unit?
2. Is the landlord authorized to retain the security deposit?
3. Award of the filing fee.

Background and Evidence

The landlord testified as follows. The rental unit is a bedroom in the basement that has shared access to a bathroom and kitchen with other tenants. The landlord resides in

the upper level of the home and does not use the kitchen and bathroom used by the tenants in the basement. Nor do the tenants in the basement use the kitchen or bathroom located in the landlord's residence.

The landlord testified that the month-to-month tenancy commenced September 1, 2009 and the tenant was required to pay rent in the amount of \$375.00 on the 1st day of every month. The tenant paid a security deposit of \$187.50 at the commencement of the tenancy. The tenant did not pay rent for January 2010 when due and the landlord personally served a *10 Day Notice to End Tenancy for Unpaid Rent* upon the tenant on January 2, 2010. The Notice has an effective date of January 12, 2010 on which date the tenant was still residing in the rental unit. The landlord talked to the tenant and the tenant advised the landlord that the tenant would probably move out at the end of the month if he could find a place to move to. The landlord then filed this application requesting an Order of Possession and upon serving the tenant with the hearing documents, the tenant threatened to stay in the rental unit until the dispute resolution hearing was held; however, on January 31, 2010 the tenant unexpectedly vacated.

With this application, the landlord is seeking to recover unpaid rent for January 2010 and loss of rent for February and March 2010. The landlord testified that as at the date of this hearing the rental unit is still unrented. The landlord claims that advertising efforts commenced the first week of February 2010 via online postings.

In addition to unpaid rent and loss of rent, the landlord is seeking to recover the cost of a new lock and keys that the landlord obtained after the tenant lost his key in December 2009.

Analysis

Upon hearing that the landlord and tenant did not share a kitchen or bathroom I find the *Residential Tenancy Act* applies to this tenancy.

Based upon the undisputed testimony of the landlord and the undisputed 10 Day Notice to End Tenancy served upon the tenant, I find the landlord has established an entitlement to recover unpaid rent for the month of January 2010 in the amount of \$375.00. I am also satisfied, based on the landlord's undisputed testimony, that the tenant's refusal to vacate by the effective date of January 12, 2010 and subsequent statements made by the tenant to the landlord precluded the landlord from trying to re-rent the unit starting in January 2010 and the landlord incurred a loss of rent for the month of February 2010 as a result. I do not award loss of rent for March 2010 as such a claim was premature at the time of the hearing.

With respect to the lost key, I find the landlord incurred the cost of replacement keys due to the tenant losing his key and I award those costs to the landlord. The receipts submitted by the landlord indicate a total cost of \$15.60 to replace the keys, including taxes. As an applicant must also do whatever is reasonable to minimize their loss pursuant to section 7 of the Act, I find I am not satisfied that the landlord's only option was to replace the entire lock as opposed to having the lock re-keyed. I award the landlord an amount intended to reflect an estimated cost of having the lock re-keyed, which I estimate to be \$20.00.

I award the landlord the filing fee paid for this application and I authorize the landlord to retain the tenant's security deposit in partial satisfaction of the unpaid rent. I provide the landlord with a Monetary Order for the balance, calculated as follows:

Unpaid rent – January 2010	\$ 375.00
Loss of rent – February 2010	375.00
Replacement keys	15.60
New lock (estimated cost to re-key)	20.00

Filing fee	50.00
Less: security deposit	<u>(187.50)</u>
Monetary Order for landlord	\$ 648.10

The landlord must serve the Monetary Order upon the tenant and may enforce it in Provincial Court (Small Claims).

Conclusion

The landlord has been authorized to retain the tenant's security deposit in partial satisfaction of the unpaid rent and the landlord has been provided a Monetary Order for the balance of \$648.10 to serve upon the tenant.

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: March 10, 2010.

Dispute Resolution Officer