

DECISION

Dispute Codes OPR, MNR, MNSD, MNDC, FF

Introduction

This hearing was convened by conference call to deal with the landlord's application for an Order of Possession for unpaid rent, a monetary order for unpaid rent and for compensation for damage or loss under the Act, regulation or tenancy agreement, for an order permitting the landlord to keep all or part of the security deposit in partial satisfaction of the claim, and to recover the filing fee from the tenant for the cost of this application.

Despite being served with the Application and notice of hearing documents by registered mail on February 20, 2010, the tenant did not attend the hearing.

At the outset of the hearing, the landlord's agent stated that the tenant vacated the unit on or about April 7, 2010, and therefore, an Order of Possession is not sought.

Further, the landlord's agent testified that the tenancy agreement, a copy of which was provided as evidence in advance of the hearing, has an obvious error showing that the tenancy began on January 1, 2009; that date should read January 1, 2010.

Issues(s) to be Decided

Is the landlord entitled to a monetary order for unpaid rent?

Is the landlord entitled to a monetary order for damage or loss under the Act, regulation or tenancy agreement?

Is the landlord entitled to retain the security deposit in partial satisfaction of the claim?

Background and Evidence

The landlord's agent testified that the tenancy began on January 1, 2010 as a fixed term tenancy to expire on June 30, 2010. Rent in the amount of \$825.00 is payable on the

1st day of each month. At the outset of the tenancy, the tenant paid a security deposit in the amount of \$412.50 and a pet deposit in the amount of \$200.00.

The landlord's agent provided a Resident Ledger in advance of the hearing, which shows that the tenant is responsible for \$10.00 per month for parking. This is not included in the Tenancy Agreement, and is hereby disallowed.

The tenant failed to pay rent in the month of February, 2010, and on February 2, 2010, the landlord issued a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities stating that the tenant failed to pay rent in the amount of \$863.50 that was due on February 1, 2010. The tenant further failed to pay rent for the months of March and April, 2010, and vacated the unit on or about April 7, 2010. The landlord is also claiming \$20.00 per month for late fees for the months of February, March and April, 2010. Further, the landlord is claiming \$27.50 for the balance of January's rent, which also includes parking for 2 months, and a \$20.00 late fee for January.

The landlord's agent also testified that the tenancy agreement includes \$300.00 in liquidated damages and to repay a \$250.00 incentive which was offered without repayment if the tenant stayed in the unit for the fixed term of the tenancy, which he did not.

Analysis

I accept the evidence of the landlord's agent that the tenancy agreement was for a 6 month fixed period to expire on June 30, 2010, and that the beginning of the tenancy should read January 1, 2010, not January 1, 2009.

I also accept the evidence of the landlord's agent that rent is outstanding for the months of February, March and April, 2010, in the amount of \$825.00 per month, as well as \$20.00 per month for late fees. The tenancy agreement states nothing about parking fees, and I disallow any monetary claim for parking. In addition, the Resident Ledger provided by the landlord shows that the tenant owed \$17.50 for January, and I find that \$10.00 of that is for parking, and \$20.00 is for late fees for January.

The tenancy agreement states in clear terms that the tenant is required to pay \$300.00 as liquidated damages to cover administrative costs. I find that the landlord is entitled to that amount.

Leaving out the parking fees, the break-down of my findings are as follows:

| SECURITY DEPOSIT & PET DEPOSIT | | | |
|--------------------------------|-------------|-------|-------|
| DATE | DESCRIPTION | DUE | PAID |
| 01-Jan | SD/PET | 612.5 | 260 |
| 01-Jan | PAYMENT | | 152.5 |
| | | | 412.5 |

| RENTAL | | | | |
|--------|-------------------|-----|-------|---------|
| DATE | DESCRIPTION | DUE | PAID | BAL DUE |
| 01-Jan | RENT | 825 | | 825 |
| 01-Jan | PAYMENT | | 387.5 | 437.5 |
| 01-Jan | PAYMENT | | 50 | 387.5 |
| 01-Jan | INCENTIVE | | 250 | 137.5 |
| 12-Jan | LATE FEE | 20 | | 157.5 |
| 12-Jan | PAYMENT | | 150 | 7.5 |
| 01-Feb | RENT | 825 | | 832.5 |
| 02-Feb | LATE FEE | 20 | | 852.5 |
| 01-Mar | RENT | 825 | | 1677.5 |
| 02-Mar | LATE FEE | 20 | | 1697.5 |
| 01-Apr | RENT | 825 | | 2522.5 |
| 02-Apr | LATE FEE | 20 | | 2542.5 |
| 30-Apr | DAMAGES | 300 | 0 | 2842.5 |
| 30-Apr | LESS SD PAID | | 412.5 | 2430 |
| 30-Apr | RECOVER INCENTIVE | 250 | | 2680 |

Conclusion

As for the monetary order, I find that the landlord has established a claim for ~~\$2,482.50~~ \$2,842.50 in unpaid rent and late fees, which includes \$300.00 in liquidated damages. ~~and \$60.00 for late fees.~~ I also award the landlord the \$250.00 for repayment of the

incentive fee due to the tenant vacating the unit prior to the end of the fixed term of the tenancy and ~~\$300.00 in liquidated damages.~~

The landlord is also entitled to recovery of the \$50.00 filing fee. I order that the landlord retain the security deposit and interest of ~~\$612.50~~ \$412.50 in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of ~~\$2,530.00~~ \$2,730.00. This order may be filed in the Small Claims Court and enforced 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: April 13, 2010.
Amended May 28, 2010

Dispute Resolution Officer