

DECISION

Dispute Codes OPR, MNR, MNSD, MNDC, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord to obtain a Monetary Order for unpaid rent and for money owed or compensation under the Act, an Order to keep all or part of the security deposit and to recover the cost of the filing fee. At the outset of the hearing the landlords' agent stated that the tenant has moved from the rental unit and therefore the landlord withdraws their application for an Order of Possession.

Service of the hearing documents, by the landlord to the tenant, was done in accordance with section 89 of the *Act*, given to the tenant in person by the landlords' agent on February 19, 2010. The landlords' agent gave affirmed testimony that service took effect as declared.

The landlords agent appeared, gave affirmed testimony, was provided the opportunity to present his evidence orally, in writing, and in documentary form. There was no appearance for the tenant, 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

- Is the landlord entitled to a Monetary Order to recover unpaid rent?
- Is the landlord entitled to a Monetary Order for money owed or compensation for damage or loss?

- Is the landlord entitled to keep all or part of the tenants' security deposit?

Background and Evidence

This tenancy started on September 01, 2009. This was a fixed term tenancy for six months which was due to expire on February 28, 2010 when the tenancy agreement gave the option of reverting to a month to month tenancy or another fixed term. The rent for this unit was \$750.00 per month and was due on the first of each month. The tenant paid a security deposit of \$375.00 on August 24, 2009.

The landlords' application was to recover rent for February, March and April, 2010 plus late fees of \$20.00 for each month rent was late. The landlord has amended this application and no longer seeks rent for April as the tenancy ended. The landlord states that the tenant did not pay the balance of rent owed for February of \$180.00. A late fee of \$20.00 was applied to the tenants account. The landlord issued a 10 Day Notice to End Tenancy on February 02, 2010. This Notice stated that the tenant had five days to pay the outstanding rent or dispute the Notice. The tenant did not pay the balance of rent owed or dispute the Notice.

The landlord states the tenant moved from the rental unit on February 25, 2010. The tenant did not provide the landlord with any Notice that she was vacating the rental unit. The landlords' agent states they have an ongoing advertisement to rent units in the building and the unit was not re-rented until April 01, 2010. The landlord seeks to recover rent for March, 2010 of \$750.00 and a late fee of \$20.00.

Analysis

The tenant did not appear at the hearing, despite having been given a Notice of the hearing; therefore, in the absence of any evidence from the tenant, I find the landlord has established his claim for unpaid rent for February, 2010 of \$180.00 and the \$20.00 late fee applied to the tenants account. I find the tenant left the rental unit on February

25, 2010 and the landlord was unable to re-rent this unit until April 01, 2010. I find the landlord attempted to mitigate his loss by attempting to re-rent the unit and I accept his testimony that he has an ongoing advertisement at the building to rent vacant units.

RTB Policy Guideline #3 – Claims for Rent and Damages for Loss of Rent states that a landlord may elect to end a tenancy and sue the tenant for loss of rent. The damages to which a landlord is entitled is an amount sufficient to compensate the landlord for any loss of rent up to the earliest time the tenant could have legally ended the tenancy. The tenancy agreement states that at the end of the fixed term the tenancy may continue on a month to month basis or another fixed term. Consequently, I find that the landlords are also entitled to recover loss of rental income of \$750.00 for March, 2010 pursuant to section 67 of the *Act*.

The landlord claims a late fee for the month of March, 2010 of \$20.00. However as this is a loss of rental income and not late payment of rent I find the landlord is not entitled to this amount.

I Order the landlord to keep the security deposit of \$375.00 in partial satisfaction of his claim pursuant to section 38(4)(b) of the *Act*.

As the landlord has been largely successful with his claim I find he is entitled to recover the \$50.00 filing fee from the tenant pursuant to section 72(1) of the *Act*. A Monetary Order has been given to the landlord for the following amount:

Unpaid rent and late fee for February, 2010	\$200.00
Filing fee	\$50.00
Subtotal	\$1,000.00
Less security deposit	(-\$375.00)
Total amount due to the landlord	\$625.00

Conclusion

I HEREBY FIND largely in favor of the landlord's reduced 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 respondent 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: April 12, 2010.

Dispute Resolution Officer