

DECISION

Dispute Codes OPR, MNR, MNDC, MNSD, FF

Introduction

This hearing dealt with the landlord's application for an Order of Possession for unpaid rent, a Monetary Order for unpaid rent, loss of rent, retention of the security deposit and recovery of the filing fee. The tenant did not appear at the hearing. The landlord provided evidence that the tenant was notified of this hearing by registered mail sent to the rental unit address and that at the time of mailing, the tenant was residing at the rental unit. I was satisfied the landlord sufficiently served the tenant with notification of this hearing and I proceeded to hear from the landlord without the tenant present.

At the commencement of the hearing, the landlord testified that the tenant vacated and returned possession of the rental unit to the landlord and an Order of Possession is no longer required. Accordingly, the remainder of this decision pertains to the landlord's monetary claims only.

Issues(s) to be Decided

1. Has the landlord established an entitlement to unpaid rent and loss of rent?
2. Retention of the security deposit, if applicable.

Background and Evidence

The landlord provided evidence of a written tenancy agreement that commenced June 1, 2007 and required the tenant to pay rent of \$353.00 on the first day of every month. The tenancy agreement does not indicate the tenant paid a security deposit. The landlord testified that approximately three years ago the landlord was subsidized and did not collect security deposits from tenants. The landlord testified the rent had been increased to \$380.00 during the tenancy. The tenant failed to pay rent for March 2010 and the landlord issued a 10 Day Notice to End Tenancy for Unpaid Rent and

personally served it upon the tenant on March 4, 2010. The Notice indicates that rent of \$400.00 was outstanding as of March 1, 2010. The landlord testified that the tenant gave the landlord a note and the keys to the rental unit March 26, 2010 informing the landlord he would be vacated by March 31, 2010. The landlord re-rented the unit as of April 15, 2010 for \$400.00 per month.

The landlord is seeking to recover the unpaid rent for March 2010 and loss of rent for April 2010. As evidence for the hearing, the landlord provided a copy of the tenancy agreement and the 10 Day Notice.

Analysis

Upon review of the tenancy agreement, I find the tenant was obligated to pay the landlord rent for the month of March 2010. I also find the tenant did not give sufficient notice to end the tenancy as of March 31, 2010 and that the landlord made reasonable efforts to re-rent the unit; therefore, the tenant is responsible for compensating the landlord for loss of rent incurred for April 2010.

I note that the rental amount of \$380.00 per month exceeds the annual rental increases permitted by the Residential Tenancy Regulation and the landlord did not provide sufficient evidence to show the rent was increased to \$380.00 in another manner that complies with the Act. I also note that the 10 Day Notice indicates rent outstanding was \$400.00. Therefore, I did not find the landlord's evidence with respect to the rent being \$380.00 per month to be consistent with the requirements of the Act or the Notice and I find the landlord entitled to recover the amount of rent that appears on the written tenancy agreement -- \$353.00 per month.

Based upon the landlord's testimony, I find the landlord did not suffer a loss with respect to the second half of April 2010 and upon hearing the new tenants pay \$400.00 per month, I reduce the landlord's claim for loss of rent for April 2010 by \$200.00 (\$400.00 x

½ month). Therefore, I award the landlord \$153.00 (\$353.00 – 200.00) for loss of rent for April 2010.

I do not find sufficient evidence to determine that a security deposit was paid by the tenant and I do not offset the amount awarded to the landlord by an amount for the security deposit.

I award the filing fee to the landlord and, in light of the above findings, I provide the landlord a Monetary Order calculated as follows:

Unpaid rent – March 2010	\$ 353.00
Loss of rent – April 2010	153.00
Filing fee	<u>50.00</u>
Monetary Order	\$ 556.00

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

Conclusion

The landlord has been provided a Monetary Order in the amount of \$ 556.00 for unpaid rent and loss of rent to serve upon the tenant.

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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 29, 2010.

Dispute Resolution Officer

