

DECISION

Dispute Codes: OPR, MNDC, MNSD and FF

Introduction

This application was brought by the landlord seeking an Order of Possession pursuant to a 10-day Notice to End Tenancy for unpaid rent served by posting on the tenant's door on March 7, 2010. The landlord also sought a Monetary Order for unpaid late and NSF fees, recovery of the filing fee for this proceeding, and authorization to retain any balance found owing from the security deposit.

This matter was originally dealt with as a Direct Request Proceeding on April 7, 2010 but was adjourned to the present participatory hearing on the grounds that, within the evidence submitted, the Dispute Resolution Officer was unable ascertain whether the \$50 claimed was late fees and NSF fees or rent.. The former items do not qualify for Direct Request proceedings.

Despite having been served with the Notice of Hearing, the tenant did not call in to the number provided to enable her participation in the telephone conference call hearing. Therefore, it proceeded in her absence.

At the commencement of the hearing, the landlord advised that the tenant had vacated the rental unit on March 15, 2010 and amended the application accordingly.

Issue to be Decided

This application now requires a decision on whether the landlord is entitled to withhold the unpaid late and NSF fees and the filing fee for this proceeding from the tenant's security deposit.

Background and Evidence

This tenancy began on February 1, 2009 and ended when the tenant, having received the 10-day Notice to End Tenancy on March 7, 2010, moved out on March 15, 2010 without providing a forwarding address. Rent was \$800 per month and the landlord holds a security deposit of \$400 paid on or about February 1, 2009.

During the hearing, the landlord gave evidence that the unpaid fees resulted from the tenant's rent cheque for December 2009 being returned as NSF. The rental agreement includes notice of the fees.

Analysis

Section 7 of the Act provides that, if either party to a rental agreement experiences a loss or damage due to the other parties' non-compliance with the legislation or rental agreement, the non-compliant party must compensate the other for the loss.

I find that the tenant owes the landlord the \$25 late fee and \$25 NSF for December 2009 and must compensate the landlord the \$50.

Having found merit in the landlord's application, I further find that the landlord may recover the filing fee from the tenant.

As the landlord holds a security deposit greater than the amount owed, I find that the landlord may retain an amount from the security deposit calculated as follows:

| Tenants' Credits | | |
|--|-----------------|-----------------|
| Security deposit (no interest due) | \$400.00 | \$400.00 |
| Award to Landlord | | |
| December 2009 late fee | \$25.00 | |
| December 2009 NSF fee | 25.00 | |
| Filing fee | 50.00 | |
| Sub total (Award to landlord) | \$100.00 | - 100.00 |
| TOTAL (Amt of security deposit due to tenant) | | \$300.00 |

Conclusion

I hereby authorize and order that the landlord may retain \$100 from the tenant's security deposit and the balance remains to be disposed of in accordance with section 38 of the Act.

May 25, 2010