

DECISION

Dispute Codes OPR, MNR, MNSD, MNDC, FF

Introduction

This hearing was set to deal with an Application for Dispute Resolution by the landlord to obtain an Order of Possession, a Monetary Order for unpaid rent and for money owed or compensation for loss or damage under the Act, regulation or tenancy agreement, 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 withdrew all aspects of their claim with the exception of their claim to recover the filing fee.

Service of the hearing documents, by the landlord to the tenant, was done in accordance with section 89 of the *Act*, sent via registered mail on April 23, 2010. Mail receipt numbers were provided in the landlord's documentary evidence. The tenant was deemed to be served the hearing documents on April 28, 2010, the fifth day after they were mailed as per section 90(a) of the *Act*.

The landlords agent appeared, gave affirmed testimony, was provided the opportunity to present her 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 recover the filing fee?

Background and Evidence

This month to month tenancy started on February 01, 2003. Rent for this unit is \$895.00 per month and this is due on the first of each month. The tenant paid a security deposit of \$410.00 on January 05, 2003.

The landlords' agent states that the tenant did not pay his rent on the day it was due for April, 2010. The landlord issued the tenant with a 10 Day Notice to End Tenancy for unpaid rent on April 02, 2010. The amount of outstanding rent and late fees was \$915.00. The landlords' agent states that the tenant paid \$665.00 on April 06, 2010. This left a balance owed of \$250.00. On April 20, 2010 the tenant paid another \$300.00 which left him with a credit of \$50.00.

On May 01, 2010 the tenant did not pay his rent owed of \$845.00 (\$895.00 - \$50.00 credit). On May 03, 2010 the tenant paid \$550.00. This left a balance owed of \$315.00 including \$20.00 late fees. On May 21, 2010 the tenant paid \$200.00. This left a balance owed for May, 2010 of \$115.00.

The tenant did not pay his rent for June, 2010 on the day it was due. He was charged another late fee of \$20.00. This left an outstanding balance of \$1,030.00. On June 02, 2010 the tenant paid \$1,000.00 which left a balance owed of \$30.00. On June 09, 2010 the tenant paid \$80.00. This gave the tenant a credit of \$50.00.

The landlord seeks to apply this \$50.00 credit to the filing fee.

The landlords' agent states the landlord has withdrawn his application for an Order of Possession as the tenant has caught up with his rent.

Analysis

I have reviewed the landlords' evidence and find the landlord is entitled to recover the filing fee from the tenant as the tenant did not pay all the outstanding rent owed for April, 2010 until the landlord had filed their application on April 20, 2010. Consequently, I find the landlord may deduct the sum of \$50.00 from the rent credit owed to the tenant.

The rent balance as of today's date is now at zero.

Conclusion

The landlords' application to recover the filing fee is upheld. The remainder of the landlords' application has been withdrawn by the landlord.

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: June 10, 2010.

Dispute Resolution Officer