

DECISION

Dispute Codes OPR, MNR, (MNSD), FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord to obtain a Monetary Order for unpaid rent, and to recover the cost of the filing fee. At the outset of the hearing the landlord stated that the tenants have moved from the rental unit and therefore they withdraw their application for an Order of Possession. However, as the tenants have moved out the landlord has requested to amend the application and seeks an Order to keep all or part of the security deposit. I have allowed this amendment to the landlords' application.

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 to each tenant on April 27, 2010. Mail receipt numbers were provided in the landlord's documentary evidence. The tenants were deemed to be served the hearing documents on May 02, 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 tenants, 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 keep the security deposit?

Background and Evidence

This tenancy started on November 01, 2009. This was a fixed term tenancy for one year and was due to expire on October 31, 2010. Rent for this unit was \$2,200.00 per month and was due on the first of each month. The tenants paid a security deposit of \$1,100.00 and a pet damage deposit of \$500.00. These were paid on October 26, 2009.

The landlords' agent testifies that the tenants paid rent for April, 2010 by cheque however this cheque was stopped and the tenants did not pay the outstanding rent by any other means. On April 07, 2010 at 12.15 p.m. the landlords' agent served the tenants with a 10 Day Notice to End Tenancy for unpaid rent. This Notice stated that the tenants had five days to pay the rent or apply to dispute the Notice. The landlords' agent testifies that the tenants did not pay the rent and moved from the rental unit on April 29, 2010. The property was not re-rented until June 01, 2010.

The landlords' agent has provided a copy of the tenancy agreement in which she points out a clause that states the landlord will charge \$25.00 for any NSF fees for returned cheques and a \$25.00 fee for late rent payments. The landlord therefore seeks to recover \$50.00 in NSF fees and a late payment fee.

The landlord seeks to keep the security and pet damage deposits in partial satisfaction of the rent arrears for April, 2010. The tenants have not provided the landlord with their forwarding address in writing.

Analysis

The tenants did not appear at the hearing, despite having been given a Notice of the hearing; therefore, in the absence of any evidence from the tenants; I have carefully considered all the evidence presented, including the affirmed evidence of the landlords agent; I find the tenants rent cheque for April, 2010 was not honored at the bank and consequently the tenants did not pay rent for April, 2010. I find therefore, that the landlord has established her claim for unpaid rent of **\$2,200.00**. I further find that the tenants must pay a late fee charge to the landlord of **\$25.00** as specified in the tenancy agreement.

However, I find from the evidence provided by the landlord that the bank did not charge the landlord a \$25.00 fee for the NSF charges and therefore I find the landlord is not entitled to recover this amount from the tenants.

I Order the landlord to keep the tenants security and pet damage deposits to the sum of \$1,600.00 in partial satisfaction of her claim pursuant to s.38(4)(b) of the *Act*. I also find the landlord is entitled to recover the **\$50.00** filing fee from the tenants. A Monetary Order has been issued for the following amount pursuant to section 67 and 72(1) of the *Act*:

Unpaid rent for April, 2010	\$2,200.00
Filing fee	\$50.00
Subtotal	\$2,275.00
Less security and pet damage deposits	\$1,600.00
Total amount due to the landlord	\$675.00

Conclusion

I HEREBY FIND largely in favor of the landlord's monetary claim. A copy of the landlord's decision will be accompanied by a Monetary Order for \$675.00. The order must be served on the respondents 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: June 11, 2010.

Dispute Resolution Officer