

DECISION

Dispute Codes OPR, MNR, MND, MNSD, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlords to obtain a Monetary Order for unpaid rent, and for damage to the rental unit, site or property. The landlords also seek 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 withdrew their application for an Order of Possession as the tenant has moved from the rental unit.

Service of the hearing documents, by the landlords to the tenant, was done in accordance with section 89 of the *Act*; the landlord's testify that the tenant was served these documents in person on August 17, 2010.

The landlords appeared, gave affirmed testimony, were provided the opportunity to present their 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 landlord's testimony and documentary evidence was carefully considered.

Issues(s) to be Decided

- Are the landlords entitled to a Monetary Order for:
 - a) Unpaid rent?
 - b) Damage to the rental unit, site or property?
- Are the landlords entitled to keep the security deposit?

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Background and Evidence

The landlords testify that this month to month tenancy started on July 04, 2009 and ended on October 03, 2010. The monthly rent for this unit was \$700.00 and was due on the first of each month. The tenant paid a security deposit of \$350.00 on July 01, 2009.

The landlords testify that the tenant gave them two rent cheques for August and September, 2010. The rent cheque of \$700.00 for August was returned by the bank as there were insufficient funds available. The landlords have provided this cheque in evidence. The landlords testify that they served the tenant in person with a 10 Day Notice to End Tenancy on August 09, 2010 due to the \$700.00 in unpaid rent. The tenant had five days to pay the rent, or apply to dispute the notice or the tenancy would end on August 20, 2010. This Notice is included in the landlords documentary evidence

The landlord's testify that the tenant did not pay the rent within the five days and his rent cheque for September's rent was returned to them as the payment had been stopped. This cheque has been provided in evidence. The landlords seek to recover the unpaid rent of \$1,400.00 and seek an Order to keep the security deposit of \$350.00 against the rent arrears.

The landlords also seek a monetary Order for damage to the rental unit. The landlord's testify that the tenant only moved out yesterday and they require time to complete the move out condition inspection to determine the damages he has left in the rental unit.

The landlords seek to recover their filing fee paid for this application.

Analysis

The tenant did not appear at the hearing, despite having been sent a Notice of the hearing; therefore, in the absence of any evidence from the tenant I refer both Parties to s. 26 of the *Act* which states:

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- 26 (1) A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

Consequently, I find the tenant did not pay rent on the day it was due for August or September, 2010 and the landlord is entitled to recover the amount of **\$1,400.00** from the tenant pursuant to s. 67 of the *Act*.

I also Order, pursuant to s. 38(4)(b) of the *Act*, that the landlords may retain the full security deposit of \$350.00 towards the outstanding rent.

As the landlords have been successful with their claim I find they are entitled to recover the **\$50.00** filing fee from the tenant pursuant to s. 72(1) of the *Act*. A Monetary Order has been issued to the landlords for the following amount:

Unpaid rent for August and September, 2010	\$1,400.00
Subtotal	\$1,050.00
Plus filing fee	\$50.00
Total amount due to the landlords	\$1,100.00

With regards to the landlords claim for a Monetary Order for damage to the rental unit, this is dismissed with leave to reapply as the tenant overhauled the rental unit until the day before the hearing and the landlords were unable to conduct the move out condition inspection or gather evidence for this section of their claim.

Conclusion

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I HEREBY FIND in favor of the landlord's monetary claim. A copy of the landlord's decision will be accompanied by a Monetary Order for **\$1,100.00**. The order must be served on the respondent and is enforceable through the Provincial Court as an order of that Court.

The remainder of the landlords claim is dismissed with leave to reapply.

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: October 04, 2010.

Dispute Resolution Officer