



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes OPC, MNR, MNDC, (MNSD), FF, O

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlords to obtain an Order of Possession, a Monetary Order for unpaid rent, and for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement. The landlords also seek to recover the cost of the filing fee. At the outset of the hearing the landlord attending requested to amend their application for an Order to keep all or part of the security deposit. The landlord also withdrew her application for an Order of Possession as the tenant has now 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*, sent via registered mail on October 15, 2010. Mail receipt numbers were provided in the landlord's documentary evidence. The tenant was deemed to be served the hearing documents on October 20, 2010, the fifth day after they were mailed as per section 90(a) of the *Act*.

The female landlord 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 a Monetary Order for unpaid rent?
- Is the landlord entitled to a Monetary Order for money owed or compensation for damage or loss?
- Is the landlord entitled to keep the security deposit?



Dispute Resolution Services

Page: 2

Residential Tenancy Branch
Ministry of Housing and Social Development

Background and Evidence

The landlord declares that this tenancy started on May 05, 2010. This was a fixed term tenancy for six months and was due to end on October 31, 2010. The landlord has provided a copy of the letter sent to the tenant in which says she does not intend to renew the tenants lease at the end of her fixed term and the tenant must vacate the rental unit by October 31, 2010. Rent for this unit was \$1,400.00 per month and was due on the first of each month. The tenant paid a security deposit of \$700.00 on May 02, 2010.

The landlord testifies that the tenant was served with a One Month Notice to End Tenancy for cause on September 28, 2010. The reason on this Notice was that the tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonable disturbed another occupant or the landlord.

The landlord states the tenants rent cheque for October, 2010 was returned by the bank as it had been cancelled by the tenant. The tenant did not pay rent for October by another means and the landlord served the tenant with a 10 Day Notice to End Tenancy on October 12, 2010.

The landlord states the tenant moved from the rental unit on October 26, 2010 and continues to owe rent for October, 2010. The landlord also seeks to recover a loss of rental income for November, 2010.

The landlord testifies that there is a clause in the tenancy agreement with the tenant which states a charge of \$60.00 will be applied for any returned cheques and late fees and a fee of \$10.00 will also apply for late fees. The landlords seek to recover these sums from the tenant for rent for October, 2010.

The landlords have requested an Order for them to keep the tenants security deposit in partial satisfaction of unpaid rent. The landlords also seek to recover their filing fee paid for this application.



Dispute Resolution Services

Page: 3

Residential Tenancy Branch
Ministry of Housing and Social Development

Analysis

The tenant did not appear at the hearing to dispute the landlord's claims, despite having been given a Notice of the hearing; therefore, in the absence of any evidence from the tenant, I have considered the landlords documentary evidence and affirmed testimony before me.

With regards to the landlords claim for unpaid rent; Section 26 of the *Act* says a tenant must pay rent when it is due under the terms of the tenancy agreement. I find the tenancy agreement states the tenant must pay \$1,400.00 on the first of each month and the tenant put a stop on her rent cheque for October, 2010. Therefore, I find the landlords have established their claim for unpaid rent of \$1,400.00.

With regard to the landlords claim for a loss of rental income for November; I find the landlords did not take the option of renewing the tenants lease after October 31, 2010 and informed her that her tenancy would end on that day. Consequently the tenant moved out before this date. Therefore, I find the landlords are not entitled to recover the sum of \$1,400.00 in loss of revenue for November, 2010.

With regard to the landlords claim for bank charges and late fees; the terms of the tenancy agreement show that the landlord will charge \$60.00 for returned cheques and late fees it also states the landlord will only charge \$10.00 for late fees. Section 7 of the Residential Tenancy Branch Regulations shows the maximum fee a landlord may charge for administrative fees i.e. bank charges is \$25.00. Consequently, I find the landlords claim for \$60.00 has been reduced to \$25.00. The terms in the tenancy agreement are not clear as to what fee the landlord will charge the tenant for late fees consequently I find the landlord is only entitled to charge the tenant \$10.00 for late fees for October, 2010.

I have considered the landlords request to amend her application to keep the tenants security deposit against unpaid rent. As the tenant has not paid the rent on the day it was due I have allowed the landlords request to keep the security deposit as this will give effect to their rights



Dispute Resolution Services

Page: 4

Residential Tenancy Branch
Ministry of Housing and Social Development

under the *Act*. I therefore, Order the landlord to keep the security deposit of \$700.00 in partial satisfaction of money owed to them by the tenant pursuant to section 38(4)(b) of the *Act*.

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

Unpaid rent October, 2010	\$1,400.00
Late fee	\$10.00
Subtotal	\$1,435.00
Filing fee	\$50.00
Less security deposit	(-\$700.00)
Total amount due to the landlord	\$735.00

Conclusion

I HEREBY FIND in partial favor of the landlord's monetary claim. A copy of the landlord's decision will be accompanied by a Monetary Order for **\$735.00**. The order must be served on the respondent 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: November 12, 2010.

Dispute Resolution Officer