



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

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, an Order to keep all or part of the security deposit and to recover the cost of the filing fee. The landlord stated that the tenant has vacated the rental unit and he therefore withdraws his application for an Order of Possession.

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 October 28, 2010. Mail receipt numbers were provided in the landlord's documentary evidence. This package was returned to the landlord and the landlord provided the envelope returned by Canada Post in evidence. The tenant was deemed to be served the hearing documents on November 02, 2010, the fifth day after they were mailed as per section 90(a) of the *Act*.

The landlord appeared and was supported by his work colleague, he gave affirmed testimony, was provided the opportunity to present his 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.



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Issues(s) to be Decided

- Is the landlord entitled to a Monetary Order for unpaid rent?
- Is the landlord entitled to keep the tenants security deposit?

Background and Evidence

This tenancy started on June 01, 2010. Rent for this unit is \$2,100.00 per month and is due on the first of each month. This was a fixed term tenancy which was due to expire on February 01, 2011. The tenant paid a security deposit of \$650.00 on June 01, 2010. The landlord testifies that the tenant vacated the unit on the weekend of November 06 and 07, 2010.

The landlord testifies that the tenant owed rent for August, 2010 of \$2,100.00 and only paid \$1,200.00 towards his rent for September. This left an outstanding balance of \$3,000.00. In October the tenant paid \$2,200.00 which left an outstanding balance of \$2,900.00. The landlord issued a 10 Day Notice to End Tenancy for unpaid rent on October 20, 2010. This was posted to the tenants' door and was deemed to have been served three days after posting. This Notice stated that the tenant owes rent up to October 20, 2010 of \$3,562.00. The landlord states that he had included other outstanding rent and utilities to the amount indicated on the Notice but cannot remember which months the tenant owed rent for prior to August, 2010 so seeks to recover outstanding rent for August, September and November, 2010.

The tenant had five days to either pay the outstanding rent, apply for Dispute Resolution or the tenancy would end on October 20, 2010. The tenant did not pay the outstanding rent or dispute the Notice within five days. Since that time the landlord states one of the



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other tenants paid \$900.00 towards rent for November, 2010. The landlord seeks to amend his application to include the remaining rent for November of \$1,200.00 as this was a fixed term tenancy and the tenant did not vacate the rental unit until November 07, 2010 this prevented the landlord entering the unit to inspect it or re-rent it. The landlord states the total amount of unpaid rent is now \$4,100.00.

The landlord seeks to recover unpaid utilities totalling \$202.00. The landlord has provided no evidence to show what utilities are unpaid.

The landlord has applied to retain the tenants' security deposit in partial payment towards the rent arrears and seeks to recover his filing fee.

Analysis

The tenant did not appear at the hearing, despite having been given a Notice of the hearing; therefore, in the absence of any evidence from the tenant to dispute the landlords claims for unpaid rent, I find that the landlord is entitled to recover rent arrears for August, September, and November, 2010 of **\$4,100.00** and a Monetary Order has been issued pursuant to s.67 of the *Act*. I have allowed the landlord to amend his claim for rent owed for November, 2010 as the tenant continued to reside at the unit and would have been aware that rent was due for November, 2010 due to the terms of his fixed term tenancy agreement.

With regards to the landlords claim for \$202.00 for unpaid utilities; in this matter the burden of proof falls to the landlord to provide evidence of the utilities owed. The landlord did not provide any evidence to show the outstanding utilities or that the tenant received a copy of the utility bills with a written request for payment. Consequently, I dismiss this section of the landlords claim without leave to reapply.



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I order the landlords pursuant to s. 38(4)(b) of the *Act* to keep the tenant's security deposit of **\$650.00** in partial payment of the rent arrears.

As the landlord has been largely successful in this matter, he is also entitled to recover the **\$50.00** filing fee for this proceeding pursuant to s. 72(1) of the *Act*.

The landlords will receive a monetary order for the balance owing as follows:

Outstanding rent for August, September and November, 2010	\$4,100.00
Subtotal	\$3,450.00
Plus filing fee	\$50.00
Total amount due to the landlords	\$3,500.00

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 **\$3,500.00**. 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 24, 2010.

Dispute Resolution Officer