

DECISION

Dispute Codes:

MNR, MNSD, FF

Introduction

This hearing was convened in response to an application by the landlord pursuant to the *Residential Tenancy Act* (the Act) for Orders as follows:

1. A Monetary Order for unpaid rent / loss of revenue - Section 67;
2. An Order to retain the security / pet deposit - Section 38
3. An Order to recover the filing fee for this application - Section 72.

Both parties attended the hearing and were given a full opportunity to present evidence, make submissions and provide testimony. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

Issue(s) to be Decided

Is the landlord entitled to the monetary amounts claimed?

Background and Evidence

The tenancy began on November 01, 2002 and ended October 01, 2008 pursuant to a Mutual Agreement to End a Tenancy executed by the parties. Rent in the amount of \$1400 was payable in advance on the first day of each month. At the outset of the tenancy, the landlord collected a security deposit from the tenant in the amount of \$650. The landlord claims that tenant failed to pay rent in the months of August and September 2008 in the total of \$2800. In addition the landlord claims \$35 for non sufficient funds (NSF) incurred August 2008.

The landlord testified that after twelve (12) months following the end of the tenancy the landlord had not received a forwarding address from the tenant in respect to the return of the security deposit, and the landlord became entitled under section 39 of the Act to

keep the security deposit of \$650 and the accrued interest of \$20.52. The landlord applied to retain this amount in partial satisfaction of their monetary claim, although this was not necessary. As a result, the landlord orally amended their claim for unpaid rent and NSF fee in the quantum totalling only \$2164.48.

The landlord provided an abundance of evidence in including the Tenancy Agreement, Mutual Agreement to End Tenancy dated September 03, 2008, and accounting spreadsheets in support of the amount claimed. The landlord testified that all supporting evidence was advanced to the tenant by registered mail to the tenant's home address on December 20, 2010. The landlord provided postal receipts and tracking numbers for the registered mail. The landlord testified under sworn affirmation that they mailed it, and also provided a courtesy copy to the tenant's place of work. The tenant denies receiving the landlord's evidence.

The tenant testified that he did not pay rent for August and September 2008 as he determined that he was not obligated to pay the rent for these two months of occupancy. The tenant's recollection is that he was given a 2 Month Notice to End Tenancy for Landlord's Use, entitling him to the equivalent to one month's rent. The tenant did not provide this evidence, and the landlord denies that the tenant was given such a Notice to End.

Analysis

I find that I prefer the landlord's evidence in respect to the provision of evidence to the tenant. I find that the tenant was deemed served 5 days after the evidence was sent, in concert with Section 90 of the Act.

On preponderance of the evidence and on the balance of probabilities, and based on the testimony of the parties, I find that the tenant has not paid the outstanding rent for August and September 2008.

Based on the above facts I find that the landlord has established a monetary claim for \$2129.48 in unpaid rent, and \$35 for an NSF fee for a total of \$2164.48. The landlord is also entitled to recovery of the \$50 filing fee, for a total entitlement of **\$2214.48**.

Rental Arrears	\$2129.48
NSF fee	\$35.00
Filing Fees for the cost of this application	50.00
Total Monetary Award	\$2214.48

Conclusion

I grant the landlord a Monetary Order under Section 67 of the Act for the amount due of **\$2214.48**. If necessary, this order may be filed in the Small Claims Court and enforced 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*.