



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes MNR, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord to obtain a Monetary Order for unpaid rent and utilities, and to recover the cost of the filing fee.

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 September 30, 2010. The landlord amended his application on January 18, 2011 and sent the tenant a copy of this by registered mail on that date. Mail receipt numbers were provided in the landlord's documentary evidence. The tenant was deemed to be served the hearing documents on October 05, 2010 and January 23, 2010, the fifth day after they were mailed as per section 90(a) of the *Act*.

The landlord appeared, 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.

Preliminary Issues

At a previous hearing brought by the tenant the landlord provided documentary evidence to support some aspects of this monetary claim. The landlord was unaware that he should provide this evidence again to support his application and the Dispute Resolution Officer is unable to access this previous documentary evidence. Consequently, it is my decision that I will not deal with all the issues that the applicant has put on the application as most of them are unrelated to the main issue which is unpaid rent

I therefore will deal with the unpaid rent portion of the application only and I dismiss the remaining unrelated monetary claims with liberty to re-apply.

Issue(s) to be Decided

- Is the landlord entitled to a Monetary Order to recover unpaid rent?

Background and Evidence

The landlord testifies that this tenancy started on February 01, 2010. This was a fixed term tenancy which was due to expire on January 31, 2011. Rent for this unit was \$3,000.00 per month and was due on the 1st of each month.

The landlord testifies that the tenant was served a 10 Day Notice to End Tenancy for unpaid rent on August 21, 2010. This gave an effective date to end the tenancy as August 31, 2010 due to \$9,000.00 in unpaid rent. The tenant applied to cancel the Notice but was unsuccessful as he did not appear at the hearing. The landlord requested and was given an Order of Possession and the tenant eventually moved from the rental unit on October 29, 2010.

The landlord testifies that the tenant owed rent for June, July, August, September and October, 2010 to the sum of \$15,000.00. The landlord has provided a copy of the tenants' payment schedule showing the outstanding rent. The landlord re-rented the unit shortly after the tenant moved out. The landlord seeks a Monetary Order to recover the unpaid rent and his filing fee of \$100.00.

Analysis

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

S. 26(1) of the *Act* states: *a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with the Act, the regulations or the tenancy agreement,*

unless the tenant has a right under the Act to deduct all or a portion of the rent. In this instance the tenant has provided no evidence to show that he has a right to deduct or withhold his rent and consequently I find the landlord has established his claim to recover unpaid rent to the sum of **\$15,000.00** pursuant to s. 67 of the *Act*.

As the landlord has been successful with this portion of his claim I also find he is entitled to recover his **\$100.00** filing fee from the tenant pursuant to s. 72(1) of the *Act*.

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 **\$15,100.00**. 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' application for a monetary award 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: February 01, 2011.

Residential Tenancy Branch