



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes

OPR, MNR, FF

Introduction

This matter dealt with an application by the landlord for a Monetary Order to recover unpaid rent and to recover the filing fee for this application. The landlord withdrew her application for an Order of Possession as the tenant as moved from the rental unit.

Service of the hearing documents was done in accordance with section 89 of the *Act*, and was given in person to the tenant on February 07, 2011. The tenant confirmed receipt of the hearing documents.

Both Parties appeared, gave affirmed testimony, were provided the opportunity to present their evidence and make submissions to me. On the basis of the solemnly affirmed evidence presented at the hearing I have determined:

Issue(s) to be Decided

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

Background and Evidence

Both parties agree that this tenancy started on November 15, 2010. This is a fixed term tenancy which was due to expire on November 15, 2011. Rent for this unit is \$1,005.00 which included the telephone but does not include long distance charges. Rent is due on the 15th day of each month.

The tenant paid a security deposit of \$495.00 on November 10, 2010 however this cheque was returned as there were insufficient funds available (NSF). The landlord testifies that the tenant

owed rent for the first month from November 15, 2010 to December 15, 2010. The tenant paid \$700.00 into the landlords account on December 15, 2010 and the landlord allocated this as \$495.00 for the security deposit and \$205.00 towards the tenants' rent for the first month. The outstanding rent for this month was **\$800.00**. The landlord testifies that the tenant paid \$500.00 towards her rent on December 29, 2010 this left an outstanding balance for the second month of **\$505.00**. On January 24, 2011 the tenant paid \$400.00 towards her third months' rent which left an outstanding balance of **\$605.00**.

The landlord issued a 10 Day Notice to End Tenancy for unpaid rent on January 25, 2011 which was posted to the tenants' door on this date and was deemed to have been served three days later. This Notice states that the tenant owes rent up to January 15, 2011 of \$1,910.00. The tenant had five days to either pay the outstanding rent, apply for Dispute Resolution or the tenancy would end on February 08, 2011. The tenant did not pay the outstanding rent or dispute the Notice within five days. The tenant moved from the rental unit on February 07, 2011.

The landlord testifies that the agreement she had with the tenant was that the telephone would be included in her rent with the exception of any long distance charges. The landlord testifies that the tenants' long distances charges for December, 2010 and January, 2011 come to a total of \$27.86. The landlord agrees that she has not provided the tenant with a copy of the phone bill and these bills have not been included in evidence. The landlord did not include this sum on her application.

The landlord seeks to recover the sum of \$1,910.00 in unpaid rent and seeks to recover \$27.86 for long distance telephone charges and her \$50.00 filing fee paid for this application.

The tenant does not dispute that she owes rent to the landlord she states she thought the \$700.00 paid on December 15, 2010 was towards her rent and the landlord had agreed she could pay her the security deposit in a timely manner.

The tenant testifies that she has not had sight of the telephone bills as they were in the landlords name and she did not open her mail. She states she does not dispute some long

distance charges but wishes to see the telephone bills before she pays them to confirm the amounts.

The tenant agrees during the hearing that the landlord may keep her security deposit of \$495.00 against the unpaid rent.

Analysis

Section 26 of the *Act* states: *a tenant must pay rent when it is due under the tenancy agreement*. Both parties agree that rent is due on the 15th day of each month and the tenant does not dispute the outstanding rent although she states she thought she had paid \$700.00 towards her rent for the first month. As the tenant agrees that rent is owed and does not dispute her security cheque was returned NSF I find the landlord is entitled to recover rent arrears of **\$1,910.00** pursuant to s. 67 of the *Act*.

With regard to the landlords claim for \$27.86 for long distance telephone charges; the landlord has not provided the tenant with a copy of these telephone bills or a written demand for payment within 30 days, neither has she provided them in evidence for this hearing or applied to recover this amount in her application. Consequently, I am not prepared to deal with this matter at this hearing and the landlord is at liberty to send the telephone bills to the tenant with a written demand for payment of the long distance charges.

During the hearing the tenant agreed the landlord may keep her security deposit of **\$495.00**. No order will be made in relation to the security deposit as the landlord did not apply to keep it. However, as the tenant has agreed the landlord may keep it I have offset it against the outstanding rent.

As the landlord has been successful with her claim I find she is entitled to recover the **\$50.00** filing fee from the tenants pursuant to section 72(1) of the *Act*. A Monetary Order has been issued to the landlord for the following amount:

Unpaid rent	\$1,910.00
Less security deposit	(-\$495.00)

Total amount due to the landlord	\$1,465.00
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Conclusion

I HEREBY FIND in favor of the landlords monetary claim. A copy of the landlords' decision will be accompanied by a Monetary Order for **\$1,465.00**. 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: February 21, 2011.

Residential Tenancy Branch