



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes

For the tenant – MT, CNR

For the landlord – OPR, MNR, MNSD, MNDC, FF

Introduction

This hearing was scheduled to deal with two applications for dispute resolution, one brought by the tenant and one brought by the landlord. Both files were due to be heard together. The hearing went ahead as scheduled but after 10 minutes the tenant failed to dial into the conference call. Therefore, no hearing took place for the tenants' application and I proceeded with the landlords' application only. The tenants' application is dismissed without leave to reapply.

The landlords seeks a Monetary Order to recover unpaid rent and utilities, and for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulation or tenancy agreement. The landlords also seek an Order to keep the tenants security deposit and to recover his filing fee. At the outset of the hearing the landlord stated that the tenant has moved from the rental unit therefore he withdraws his application for an Order of Possession for unpaid rent.

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 February 14, 2011. Mail receipt numbers were provided in the landlord's documentary evidence. The tenant was deemed to be served the hearing documents on February 19, 2011, 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.

Issue(s) to be Decided

- Is the landlord entitled to a Monetary Order to recover unpaid rent and utilities?
- Is the landlord entitled to a Monetary Order for money owed or compensation for damage or loss?
- Is the landlord entitled to keep the tenants security deposit?

Background and Evidence

The landlord testifies that this tenancy started on July 01, 2010 however he did agree that the tenant could move into the rental unit on June 26, 2010. This was a fixed term tenancy which was due to expire on April 30, 2011. Rent for this unit was \$1,275.00 per month and was due on the 1st of each month. The tenant paid a security deposit of \$637.50 on June 24, 2010.

The landlord testifies that the tenant did not pay rent for January, 2011 on the day it was due. The tenant did pay \$900.00 on January 10, 2011 which left a balance of rent outstanding of \$375.00. The landlord testifies that he served the tenant with a 10 Day Notice to End Tenancy on January 28, 2011. This Notice states the tenant has five days to pay the rent or dispute the Notice or the tenancy will end on February 08, 2011. The tenant did dispute the Notice on February 07, 2011 but failed to appear for the hearing and her application has been dismissed.

The landlord testifies that the tenant did not pay rent on February 01, 2011 but paid \$375.00 on February 07, 2011. This sum has now been applied towards the outstanding rent for January, 2011. The tenant now owes rent of \$1,275.00 for February, 2011 and the landlord has verified that the tenant moved from the rental unit on or about February 27, 2011.

The landlord testifies that the tenant has failed to pay her utilities for:
August, 2010 of \$121.32

October, 2010 of \$127.73
November, 2010 \$120.67
December, 2010 of \$155.33
January, 2011 of \$149.37
February, 2011 of \$148.26

The total amount of outstanding utilities is now \$822.68. The landlord has provided copies of the utility bills from the City in evidence.

The landlord testifies that the tenancy agreement between them states the landlord will charge \$25.00 for late fees plus \$2.00 per day for each day rent is late. The landlord now realizes the maximum he can charge is \$25.00 per month and amends his claim accordingly for January and February, 2011 to a total sum of \$50.00.

The landlord testifies that the tenancy agreement also has a liquidated damages clause that states the tenant must pay the landlord the sum of \$2,550.00 if she elects to end the tenancy before the end of the fixed term. The landlord testifies that as he has only just found out the tenant has moved out he has instructed his agent to place the unit back on the market for rent and has not been able to re-rent the unit for March at this time. The landlord does not yet know when the unit will be re-rented so is unable to estimate his loss of income up to the end of the fixed term agreement.

The landlord has requested an Order to keep the security deposit of \$637.50 to offset against the unpaid rent and utilities. The landlord also seeks to recover his filing fee from the tenant of \$50.00.

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.

Section 26 of the *Act* states: *a tenant must pay rent when it is due under the tenancy agreement*. The tenancy agreement shows that rent is due on the first day of each month and the landlord has testified that the tenant now owes rent for February, 2011 to the sum of \$1,275.00. Consequently, I find that the landlord is entitled to recover rent arrears of **\$1,275.00** pursuant to s. 67 of the *Act*.

I also find the landlord has provided sufficient evidence to support his claim for unpaid utilities of \$822.68 and is therefore entitled to a Monetary Order to recover this sum.

The landlord also seeks to recover \$25.00 in late fees for January and February, 2011. As the tenancy agreement does state the landlord may charge a tenant this amount plus an additional \$2.00 per day for late fees. I am satisfied that the landlord has amended his claim for the \$25.00 for each of the months to a total sum of \$50.00 in late fees pursuant to s. 67 of the *Act*.

The landlord has also sought to recover liquidated damages from the tenant as she moved from the rental unit before the end of her fixed term. As the landlord was only just made aware that the tenant has moved out and has been unable to re-rent the unit at the time of the hearing I find it would be prudent to give the landlord leave to reapply for liquidated damages once he is able to determine when, if at all, the rental unit can be re-rented before the end of the fixed term. Therefore this section of the landlords claim is dismissed with leave to reapply.

I find the landlord is entitled to keep the tenants security deposit of \$637.50 to offset against unpaid rent pursuant to s. 38(4)(b) of the *Act*. I further find as the landlord has been largely successful with his claim he is entitled to recover the \$50.00 filing fee from the tenant pursuant to s. 72(1) of the *Act*. A Monetary Order has been issued to the landlord for the following amount:

Unpaid rent February, 2011	\$1,275.00
Late fees	\$50.00
Subtotal	\$2,147.68
Less security deposit	(-\$637.50)
Plus filing fee	\$50.00
Total amount due to the landlord	\$1,560.18

Conclusion

The tenants' application is dismissed without leave to reapply.

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 **\$1,560.18**. The order must be served on the respondent and is enforceable through the Provincial Court as an order of that Court.

The reminder of the landlords' application concerning liquidated damages 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: March 08, 2011.

Residential Tenancy Branch