



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes 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 filing fee paid for this application.

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 November 05, 2010. Mail receipt numbers were provided by the landlords' agent. The tenant was deemed to be served the hearing documents on November 10, 2010, the fifth day after they were mailed as per section 90(a) of the *Act*.

The landlords agent 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.

Issues(s) to be Decided

- Is the landlord entitled to a Monetary Order to recover unpaid rent?
- Is the landlord is entitled to keep all or part of the security deposit towards any rent arrears?

Background and Evidence

This tenancy started on July 01, 2010. This was a fixed term tenancy for one year and was due to expire on June 30, 2011. Rent for this unit was \$900.00 per month due on the 1st of each month. The tenant paid a security deposit on June 22, 2010 of \$450.00. The tenant left the rental unit sometime around the middle of November, 2010 and the landlord obtained the tenants forwarding address from a relative.

The landlords' agent testifies that the tenant did not pay rent for September, October or November, 2010 to the sum of \$2,700.00. The landlords' agent states the tenant was served with Notice to End the tenancy and he vacated the rental unit without telling the landlord. The landlords' agent testifies the tenant did not pay his 40% share for the Gas bill for August to October, 2010 to a sum of \$142.63. The landlords' agent testifies that the tenant did not pay his 40% share of the City bills for August, September and October, 2010 of \$21.62, \$16.49 and \$30.35. (Utility bills provided in evidence). The landlord also seeks to recover unpaid utilities of \$84.00 and \$4.59 but states the bills for these are missing and cannot be presented in evidence. The landlord seeks a Monetary Order for unpaid utilities of \$299.68.

The landlords' agent testifies that the tenant was late with his rent for September and October and seeks to recover \$30.00 for each month in late fees.

The landlord requests an Order to keep the tenants security deposit in partial payment of the rent and utility arrears. The landlord also seeks to recover his \$50.00 filing fee paid for this application

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 of the landlords agent. S. 26 of the Act states a tenant must pay rent on the day it is due. The landlords agent has testified that rent is due on the 1st day of each month and the tenant failed to pay rent for September, October or November, 2010. Therefore, I find the landlord is entitled to recover rent arrears for these three months to a total amount of **\$2,700.00** pursuant to s. 67 of the *Act*.

I find the landlord is entitled to recover unpaid utilities to the amount of **\$211.09** as he has provided sufficient evidence to support this section of his claim. The remainder of the landlords claim for unpaid utilities is dismissed as he has been unable to produce the utility bills to provide documentary evidence to support the reminder of his claim.

With regard to the landlords claim for late fees for two months; A landlord may only charge late fees if the tenant has agreed to these charges in the tenancy agreement pursuant to s. 7(2) of the Residential tenancy Regulations. The landlord has applied for \$30.00 for each of the months and the maximum amount allowed a landlord may charge a tenant in late fees is \$25.00 per month pursuant to s. 7(1)(d) of the Residential Tenancy Regulations. However the landlord has failed to provide a copy of the tenancy agreement in evidence to show that this clause is included in the agreement between the landlord and tenant. Therefore this section of the landlords claim is dismissed.

I order the landlord pursuant to s. 38(4) of the Act to keep the tenant's security deposit of \$450.00 in partial payment of the rent arrears.

As the landlord has been partially successful with his claim I find he is entitled to recover the **\$50.00** filing fee from the tenant pursuant to section 72(1) of the Act. The landlord will receive a monetary order for the balance owing as follows:

Outstanding rent	\$2,700.00
Subtotal	\$2,911.09
Less security deposit	(-\$450.00)
Total amount due to the landlord	\$2,511.09

Conclusion

I HEREBY FIND in partial favor of the landlords' monetary claim. A copy of the landlords' decision will be accompanied by a Monetary Order for **\$2,511.09**. The order must be served on the tenant 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: March 09, 2011.

Residential Tenancy Branch