



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, 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. An Order of Possession - Section 55;
2. A Monetary Order for unpaid rent - Section 67;
3. An Order to retain the security deposit - Section 38; and
4. An Order to recover the filing fee for this application - Section 72.

I accept the Landlord’s evidence that the Tenant was served with the application for dispute resolution and notice of hearing by registered mail in accordance with Section 89 of the Act. The Tenant did not participate in the conference call hearing.

The Landlord was given full opportunity to be heard, to present evidence and to make submissions. At the onset of the Hearing, the Landlord withdrew his claim for an Order of Possession as the Landlord has possession of the unit.

Issue(s) to be Decided

Is the Landlord entitled to the monetary amounts claimed?

Background and Evidence

The tenancy began on June 1, 2011. Rent in the amount of \$780.00 is 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 \$390.00. The Tenant failed to pay rent for the month of August 2011 and on August 2, 2011 the Landlord personally served the Tenant with a notice to end tenancy for non-payment of rent with

a move-out date of August 12, 2011. The Tenant did not file an Application for Dispute Resolution. On August 18, 2011, the Landlord inspected the unit and discovered that the Tenant had vacated the unit and had left the keys inside the unit. The Landlord claims \$780.00 for unpaid rent and withdraws his claim for an Order of Possession.

Analysis

Section 44 of the Act sets out when a tenancy will end. Where a Landlord has elected to end a tenancy because of non-payment of rent, a tenant is not liable to pay rent after the tenancy agreement has ended. If however, the tenant remains in possession of the premises, the tenant will be liable to pay occupation rent on a per diem basis until the landlord recovers possession of the premises. The Landlord in this case has elected to end the tenancy agreement for non-payment of rent by serving a 10 day notice to end tenancy with a move-out date of August 12, 2011. As such, the Tenant is liable for rent to that date or until the Landlord regains possession. Since the Landlord did not regain possession of the unit until August 18, 2011, I find that the Tenant is liable for an amount of rent to August 18, 2011. The per diem rate for the rent calculated on a monthly basis is \$25.16 (780.00 / 31). I find the Landlord has established and is entitled to the amount of **\$452.90** (\$25.16 x 18) in unpaid rent.

The Landlord is also entitled to recovery of the \$50 filing fee, for a total entitlement of **\$502.90**. The **security deposit** will be off-set from the entitlement calculated as follows:

Rental Arrears	\$452.90
Filing Fees for the cost of this application	50.00
Less Security Deposit and interest <i>to date</i>	-390.00
Total remaining	\$112.90

Conclusion

I order that the Landlord retain the **deposit** and interest of \$390.00 in partial satisfaction of the claim and I grant the Landlord an order under Section 67 of the Act for the balance due of **\$112.90**. 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*.

Dated: September 14, 2011.

Residential Tenancy Branch