



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNSD, MNDC, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord to obtain an Order of Possession, a Monetary Order for unpaid rent, an Order to keep all or part of the security deposit, a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, Regulation or tenancy agreement and to recover the cost of the filing fee. At the outset of the hearing the landlord stated that the tenant has moved from the rental unit and she therefore withdraws her application for an Order of Possession.

Service of the hearing documents, by the landlord to the tenant, was done in accordance with section 89 of the *Act*, and was given to the tenant in person on August 09, 2011.

The landlord appeared, gave sworn testimony, was provided the opportunity to present her 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 for unpaid rent?
- Is the landlord entitled to a Monetary Order for a loss of rental income?
- Is the landlord entitled to keep the security deposit?

Background and Evidence

The landlord testifies that this tenancy started on December 01, 2010. This was a fixed term tenancy for 12 months and was due to expire on December 01, 2011. Rent for this unit was \$800.00 per month and was due on the 1st day of each month. The tenant paid a security deposit of \$400.00 on December 01, 2010.

The landlord testifies that the tenant failed to pay rent for June, 2011 of \$800.00 and only paid \$400.00 towards her rent for July, 2011. The landlord served the tenant with a 10 Day Notice to End Tenancy on August 03, 2011 in person. This notice stated the tenant had five days to pay the outstanding rent, or dispute the Notice or the tenancy would end on August 13, 2011. The landlord testifies the tenant failed to pay the rent and she abandoned the unit on either September 02 or 03, 2011.

The landlord also seeks to recover unpaid rent for September, 2011 of \$800.00 because the tenant broke the lease before the end of the fixed term. The landlord testifies the unit was been advertised since the tenant moved out but as she has left damages in the unit they have not yet been able to re-rent the unit for September, 2011.

The landlord testifies that the 10 Day Notice also included a sum for utilities of \$1,225.00 but agrees this was an error as utilities are included in the tenants rent.

The landlord seeks an Order to keep the tenants security deposit in partial satisfaction of the unpaid rent and seeks to recover her \$50.00 filing fee.

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 considered the landlords documentary evidence and affirmed testimony before me of the landlords' agent. Section 26 of the Act states: *A tenant must pay rent*

when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

The landlord has testified that rent is due on the 1st day of each month and the tenants failed to pay rent for June, 2011 and the balance of rent for July, 2011. Therefore, I find the landlord is entitled to recover rent arrears **\$1,200.00** pursuant to s. 67 of the *Act*.

With regard to the landlords claim for a loss of rental income for September, 2011; as the landlord has been attempting to re-rent the unit for September to mitigate her loss I find she is entitled to recover a loss of rental income for September, 2011 of \$800.00 If the unit does not rent for the remainder of the fixed term of the tenancy agreement the landlord is at liberty to file another application. Therefore, the landlord may recover the sum of **\$800.00** from the tenant pursuant to s. 67 of the *Act*.

I also Order, pursuant to Section 38 (4)(b), that the landlord may retain the full security deposit of \$ 400.00 towards the outstanding rent.

As the landlord has been largely successful with her claim I find she 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 following amount:

Unpaid rent for June and July, 2011	\$1,200.00
Less security deposit	(-\$400.00)
Filing fee	\$50.00
Total amount due to the landlord	\$1,650.00

Conclusion

I HEREBY FIND largely in favor of the landlords' monetary claim. A copy of the landlords' decision will be accompanied by a Monetary Order for **\$1,650.00**. 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: September 13, 2011.

Residential Tenancy Branch