



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MND, MNSD, FF

Introduction

This hearing was convened by way of conference call in repose to the landlords application for an Order of Possession for unpaid rent and utilities; for a Monetary Order for unpaid rent or utilities; a Monetary Order for damage to the unit, site or property; for an Order permitting the landlord to keep all or part of the tenants security; and to recover the filing fee from the tenant for the cost of this application.

The landlord attended the conference call hearing, gave sworn testimony and was given the opportunity to provide documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. All evidence and testimony has been reviewed and are considered in this decision. The tenant failed to dial into the conference call. Ten minutes was allowed at the start of the hearing for the tenant to dial into the call. The tenant dialed into the conference call just as the matter was concluded therefore no testimony was taken from the tenant.

At the outset of the hearing the landlord advised that the tenant is no longer residing in the rental unit, and therefore, the landlord withdraws the application for an Order of Possession. The landlord also withdraws his application for a Monetary Order for damage to the rental unit.

Issue(s) to be Decided

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

- Is the landlord entitled to keep the tenants security deposit in partial satisfaction of unpaid rent?

Background and Evidence

This month to month tenancy started on December 01, 2009. Rent was \$1,300.00 per month due on the 1st of each month. The tenant paid a security deposit on December 01, 2009 of \$650.00.

The landlord testifies that the tenant did not pay rent for April, May and June and July, 2011 and at that time owed \$5,200.00. The tenant paid \$980.00 on July 16, 2011 bringing the tenants arrears to \$4,220.00. The landlord served the tenant with a 10 Day Notice to End Tenancy; however the landlord later withdrew this Notice because the tenant gave the landlord a promissory note to pay back the rent arrears within a time frame. The landlord testifies that the tenant failed to adhere to this. The landlord testifies the tenant paid \$100.00 on August 05, 2011 and \$300.00 on August 06, 2011 making the arrears \$4,220.00. The tenant paid \$1,300.00 on September 02, 2011. The landlord served the tenant with a 10 Day Notice to End Tenancy on September 14, 2011 in person. This Notice had an effective date of September 25, 2011 due to \$4,220.00 in unpaid rent. The landlord states the tenant did not dispute this Notice and moved from the rental unit on September 30, 2011. The landlord seeks a Monetary Order to recover the unpaid rent of \$4,220.00.

The landlord originally applied to recover the sum of \$5,270.00 however the landlord has reduced his claim at this time to \$4,220.00

The landlord requests an Order to keep the tenants security deposit of \$650.00 in partial payment of the rent arrears and seeks to recover the \$100.00 filing fee paid for this application.

The landlord provided the following documentary evidence: a copy of the rent ledger, the tenancy agreement two 10 Day Notices to End Tenancy and the promissory note from the tenant.

Analysis

The tenant did not appear at the hearing to dispute the landlord's claims until after the hearing had concluded; 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, 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.*

It is my decision that the tenant failed to pay the full rent owed for April, May, June and July 2011. The landlord has therefore established his claim for unpaid rent and will receive a Monetary Order for the sum of **\$4,220.00** pursuant to s. 67 of the Act.

I order the landlord pursuant to s. 38(4)(b) of the Act to keep the tenant's security deposit of **\$650.00** in partial payment of the rent arrears.

As the landlord has been successful with this claim I find the landlord is entitled to recover the **\$100.00** 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	\$4,220.00
Less security deposit	(-\$650.00)
Plus filing fee	\$100.00
Total amount due to the landlord	\$3,470.00

Conclusion

I HEREBY FIND in favor of the landlords' amended monetary claim. A copy of the landlords' decision will be accompanied by a Monetary Order for **\$3,470.00**. 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: October 28, 2011.

Residential Tenancy Branch