



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 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; for an Order permitting the landlord to keep all or part of the tenants security deposit; for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement; and to recover the filing fee from the tenant for the cost of this application.

At the outset of the hearing the landlord advised that the tenants are no longer residing in the rental unit, and therefore, the landlord withdraws the 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*, sent via registered mail on December 02, 2011. Mail receipt numbers were provided in the landlord's documentary evidence. The tenant was deemed to be served the hearing documents on the fifth day after they were mailed as per section 90(a) of the *Act*.

The landlord appeared, gave sworn 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 for 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

This tenancy started on August 01, 2011. Rent for this unit was \$630.00 per month plus \$45.00 or 10 percent of the utilities whichever is the greater. Rent and utilities were due on the 1st of each month. This was a fixed term tenancy which was due to expire on July 31, 2012.

The landlord testifies that the tenant paid rent and utilities of \$675.00 for November, 2011 by cheque however this was returned as there were insufficient funds to honour it (NSF). The landlords' agent also states the tenant owed \$45.00 outstanding in September and \$40.00 for utilities for October, 2011. The total amount of outstanding rent and utilities is now \$760.00. The landlord also seeks to recover the NSF fee of \$25.00 for the tenants returned rent and utility cheque but agrees this charge has not been agreed in the tenancy agreement.

The landlord states the tenant was served with a 10 Notice to End Tenancy on November 04, 2011, by posting the notice to the tenants' door. This Notice states the tenant has five days to pay the outstanding rent or dispute the Notice by applying for dispute resolution or the tenancy will end on November 17, 2011. The landlord testifies the tenant did not pay the outstanding rent and utilities and moved from the rental unit on or about December 04, 2011. The landlord states the tenant also failed to pay rent and utilities for December, 2011. The landlord seeks a Monetary Order to recover rent and utilities plus the NSF fee of \$25.00 and seeks to recover the \$50.00 filing fee.

The landlord requests an Order to keep the tenants security deposit of \$315.00 in partial payment of the rent arrears

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. 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 and utilities is due on the 1st day of each month I am satisfied that the landlord has provided sufficient evidence to support their claim for unpaid rent and utilities to the sum of \$760.00 from September, October and November, 2011 and for \$675.00 for December, 2011. Therefore, I find the landlord is entitled to a Monetary Order to recover these arrears of \$1,435.00 pursuant to s. 67 of the Act.

With regard to the landlords claim to recover an NSF fee for the uncleared cheque; I find as the tenant was not aware these charges would be made as they have not been documented in the tenancy agreement the landlord is not entitled to charge the tenant this NSF fee of \$25.00 and this portion of the landlords claim is dismissed.

As the landlord has been largely successful with their claim I find the landlord 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 and utilities	\$1,435.00
Less security deposit	(-\$315.00)
Filing fee	\$50.00
Total amount due to the landlord	\$1,170.00

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 **\$1,170.00**. 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: December 15, 2011.

Residential Tenancy Branch