



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MNSD, OPR, FF

Introduction

This hearing was convened by way of conference call in repose to the landlords applications for an Order of Possession for unpaid rent; for a Monetary Order for unpaid rent; for an Order permitting the landlord to keep all or part of the tenants security and pet deposit; and to recover two filing fees from the tenant for the cost of these applications.

Service of the first set of hearing documents, by the landlord to the tenant, was done in accordance with section 89 of the *Act*, sent via registered mail on November 02, 2011. Mail receipt numbers were provided in the landlord's documentary evidence. The tenant was deemed to be served these hearing documents on the fifth day after they were mailed as per section 90(a) of the *Act*. The landlord testifies that they did not serve the tenant with the second set of hearing documents and the landlord withdraws the second application file number 784304 which was to deal with the Order of Possession.

The landlord and an agent for the landlord appeared, gave sworn testimony, were provided the opportunity to present 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 to recover unpaid rent?
- Is the landlord entitled to an Order to keep all or part of the tenant's security deposit?

Background and Evidence

The landlord testifies that this month to month tenancy started on November 01, 2009. The rent for this unit was \$800.00 per month and was due on the last day of each month in advance. The tenant paid a security deposit of \$400.00 On October 30, 2009.

The landlord testifies that the tenant has failed to pay rent since June, 2011. The tenant owes rent for July, August and September, 2011 to the sum of \$2,475.00 this also included late fees of \$25.00 for each month. The landlord testifies that the tenant was served with a 10 Day Notice to End Tenancy on September 19, 2011. This Notice states the tenant owes rent of \$2,475.00 and gave an effective date for the Notice of September 29, 2011. The landlord testifies that the tenant did not dispute the Notice and failed to pay any of the rent arrears. The landlord testifies that since that time the tenant has also failed to pay rent for October, November and December, 2011. The landlord testifies that the total amount of unpaid rent is now \$4,800.00 and the landlord also seeks to recover late fees of \$150.00 comprised of \$25.00 per month for six months. The landlord agrees the tenancy agreement does not contain information concerning late fees and has not provided a copy of the tenancy agreement in evidence.

The landlord states the tenant signed a mutual agreement to end the tenancy and moved from the rental unit on December 11, 2011.

The landlord seeks to keep the security deposit of \$400.00 in partial satisfaction of the unpaid rent and seeks to recover the \$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 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 is due on the last day of each month and I am satisfied that the landlord has provided sufficient evidence to support their claim for unpaid rent for six months to the sum of \$4,800.00. Therefore, I find the landlord is entitled to a Monetary Order to recover these rent arrears pursuant to s. 67 of the *Act*.

With regard to the landlords claim to recover late fees for each of the six months; 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 late fees of \$150.00 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	\$4,800.00
Less security deposit	(-\$400.00)
Filing fee	\$50.00
Total amount due to the landlord	\$4,450.00

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 **\$4,450.00**. 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 29, 2011.

Residential Tenancy Branch