



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, 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; for a Monetary Order for unpaid rent; for an Order permitting the landlord to keep all or part of the tenants security deposit; 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 tenant is 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 November 03, 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 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 keep the tenants security deposit?

Background and Evidence

This tenancy started on July 08, 2011. Rent for this unit was \$1,500.00 per month. Rent is due on the 1st of each month. This was a fixed term tenancy which was due to expire on June 30, 2012. The tenant paid a security deposit of \$750.0 on July 08, 2011. The tenant and landlord conducted a move in and a move out condition inspection of the unit and the landlord has provided a copy of these reports in evidence. The tenant gave the landlord his forwarding address in writing on October 20, 2011. The tenant has signed the move out condition report and agreed the landlord can keep the security deposit of \$750.00 to offset against cleaning costs of \$250.00 and unpaid rent of \$3,000.00. The landlord has provided a copy of the receipt for cleaning the tenants unit. The landlord states the actual cost of cleaning was less then estimated and the landlord seeks to revise their claim to the sum shown on the cleaning receipt of \$224.00.

The landlord testifies that the tenant failed to pay rent for August and when asked to provide evidence of a rent payment for August the tenant failed to do so. The tenants paid rent for October by cheque however this was returned as there were insufficient funds to honour it (NSF). The landlord has provided a copy of this check in evidence.

The landlord states the tenant was served with a 10 Notice to End Tenancy on October 03, 2011, in person. 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 October 13, 2011. The landlord testifies the tenant did not pay the outstanding rent and utilities and moved from the rental unit on October 20, 2011. The landlord seeks a Monetary Order to recover rent and seeks to recover the \$50.00 filing fee.

The landlord seeks an Order to keep the tenants security deposit as agreed on the move out condition inspection report.

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 1st day of each month I am satisfied that the landlord has provided sufficient evidence to support their claim for unpaid rent to the sum of \$3,000.00 For August and October 2011. Therefore, I find the landlord is entitled to a Monetary Order to recover these arrears pursuant to s. 67 of the Act.

The landlord has filed a claim to keep the tenants security deposit however when a tenant agrees in writing that the landlord may keep all or part of a security deposit the landlord is not required to file a claim to keep it in accordance with s. 38(4)(a) of the Act. Consequently, I will deduct the security deposit from the amount claimed for cleaning as agreed by the tenant and the balance will be offset against the unpaid rent.

As the landlord has been 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	\$3,000.00
Cleaning	\$224.00
Less security deposit	(-\$750.00)
Filing fee	\$50.00
Total amount due to the landlord	\$2,524.00

Conclusion

I HEREBY FIND in favor of the landlord's revised monetary claim. A copy of the landlord's decision will be accompanied by a Monetary Order for **\$2,524.00**. 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: January 19, 2012.

Residential Tenancy Branch