



Dispute Resolution Services

Page: 1

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; for a Monetary Order for unpaid rent; 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 tenants 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 tenants, was done in accordance with section 89 of the *Act*, sent via registered mail on October 14, 2011. Mail receipt numbers were provided by the landlord in evidence for each tenant. The tenants were 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 affirmed testimony, was provided the opportunity to present evidence orally, in writing, and in documentary form. There was no appearance for the tenants, 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 keep the security deposit?
- Is the landlord entitled to a Monetary Order for money owed or compensation for damage or loss?

Background and Evidence

The landlord testifies that this month to month tenancy started on June 01, 2011. Rent for this unit was \$1,550.00 per month and was due on the last day of each month. The tenants moved from the rental unit on or about November 04, 2011 without giving a forwarding address in writing to the landlord.

The landlord states the tenants were late paying their rent for September, 2011 and the tenants failed to pay rent due for October, 2011. A 10 Day Notice to End Tenancy was served to the tenants on October 02, 2011 by posting it to the tenants' door. This Notice had an effective date of October 16, 2011 due to \$1,550.00 in unpaid rent. The landlord states the tenants failed to vacate the rental unit on this date and continued to reside at the rental unit until around November 04, 2011 when the landlord determined that the tenants had vacated the unit. The landlord states the tenants also failed to pay rent for November on the day it was due. The landlord requests a Monetary Order for unpaid rent of \$3,100.00.

The landlord states that due to the tenants' failure to pay rent on time the mortgage payments were not cleared by the landlord's bank and she incurred NSF fees from her bank of \$42.50 and NSF fees from her mortgage company of \$50.00 for September, October and November. The landlord also states that due to the tenants' failure to pay rent on time she was also charged NSF fees by the bank for her house insurance

payments for September, October and November, 2011 of \$42.50 for each month. The landlord seeks to recover the sum of \$405.00 for these charges from the tenants.

The landlord requests an Order to allow the landlord to keep the tenants security deposit of \$775.00 in partial satisfaction of the unpaid rent. The landlord also seeks to recover the \$50.00 filing fee from the tenants.

Analysis

The tenants 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 tenants, 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 rent is due on the last day of each month in advance and I find the tenants have failed to pay rent for October 2011. Therefore the landlord is entitled to a Monetary Order to recover the sum of \$1,550.00. I further find the landlord is entitled to recover unpaid rent for November, 2011 in the amount of \$1,550.00. RTB Policy Guideline #3 – Claims for Rent and Damages for Loss of Rent states that a landlord may elect to end a tenancy and sue the tenant for loss of rent. The damages to which a landlord is entitled is an amount sufficient to compensate the landlord for any loss of rent up to the earliest time the tenant could have legally ended the tenancy. As the fixed term tenancy was not due to end until June, 2012. The landlord would be entitled to apply for unpaid rent up to this point or whenever the unit was re-rented. In this case the landlord has only applied for November, 2011 rent. Consequently, the landlord has

established her claim for unpaid rent of **\$3,100.00** and will receive a monetary award pursuant to s. 67 of the *Act*.

I have considered the landlords claim for NSF fees totaling \$405.00 due to bank charges applied to the landlord's bank account and mortgage account. The landlord claims this occurred because the rent was either late or unpaid. However, I find there is no provision under the *Act* to allow me to award bank charges of this nature. Tenants are not held responsible for the landlord defaulting on her mortgage payments or insurance payments and a charge of this nature cannot be passed on to the tenants if they could not be deemed to have reasonably known that their failure to pay rent would result in these charges being applied. Consequently, this section of the landlord's monetary claim is dismissed without leave to reapply.

I Order the landlord to keep the tenants security deposit of **\$775.00** in partial satisfaction of the unpaid rent pursuant to s. 38(4)(b) of the *Act*.

As the landlord has been partially successful with her claim I find she is entitled to recover the **\$50.00** filing fee from the tenants pursuant to section 72(1) of the *Act*. A Monetary Order has been issued to the landlord for the following amount:

Unpaid rent	\$3,100.00
Less security deposit	(-\$775.00)
Plus filing fee	\$50.00
Total amount due to the landlord	\$2,375.00

Conclusion

I HEREBY FIND in partial favor of the landlord's monetary claim. A copy of the landlord's decision will be accompanied by a Monetary Order for **\$2,375.00**. The order must be served on the respondents 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: November 08, 2011.

Residential Tenancy Branch