



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord for an order of possession, and a monetary order for unpaid rent and the filing fee.

The Landlord provided affirmed testimony that he served the Tenant in person with the Application for Dispute Resolution and Notice of Hearing on January 24, 2012 at 7:45 in the evening at the rental unit. I find that the Tenant was served the Application and Notice of Hearing in accordance with section 88 of the Residential Tenancy Act (the "Act").

The Tenant did not participate in the conference call hearing. The Landlord was given full opportunity to be heard, to present evidence and to make submissions.

Preliminary Matter(s)

The Landlord testified that he no longer requires an order of possession as the Tenant moved out of the rental unit on February 07, 2012 and he has possession of the rental unit. As a result, the Landlord's request for an order of possession is dismissed.

The Landlord made an oral request at the hearing to amend the Application to include unpaid rent/rental income loss for February 2012 (\$1,000.00).

Pursuant to section 64(3) of the Act I am granting the Landlord's request to amend the Application to include the unpaid rent or rental income loss for February 2012 as it is reasonable to do so. The Tenant is aware that rent for February is due, and she did not vacate the rental unit by February 01, 2012.

The Landlord made an oral request at the hearing to amend the Application to reflect that the correct amount of late fees being requested is \$25.00 for December 2011 and \$25.00 for January 2012, pursuant to the tenancy agreement rather than \$20.00 initially requested for those months. The Landlord stated that the Tenant did not write NSF cheques, but rather paid she rent by cash. The Landlord stated that the Tenant only paid part of December's rent and it was late (\$600.00 on January 17, 2012), and none

of the January rent owed. The Landlord provided a copy of the tenancy agreement into evidence, which is signed by the Tenant on June 17, 2011, which states in item 19 that the Landlord is entitled to late fees of \$25.00 for each month where rent payment is late.

I find that it is reasonable to grant the Landlord's request to amend the Application for \$25.00 in late fees for two month's (December and January) where the rent was late or not paid in accordance with the tenancy agreement.

Issue(s) to be Decided

Has the Tenant breached the Act or tenancy agreement, entitling the Landlord to a monetary order for unpaid rent and recovery of the filing fee?

Background and Evidence

The signed tenancy agreement between the parties was submitted in the evidence by the Landlord. The tenancy agreement states that the tenancy commenced on July 01, 2011, and rent is due on the first day of the month in the amount of \$1,000.00. The Tenant paid the Landlord a security deposit of \$500.00 on June 17, 2011. The tenancy agreement signed by the parties, also states that \$25.00 is owed by the Tenant for each month where the rent is late.

The Landlord testified that the Tenant failed to pay rent on December 01, 2011. The Landlord stated that on January 01, 2012, the Tenant also failed to pay rent. The Landlord stated that they issued the Tenant a 10 Day Notice to End Tenancy for Unpaid Rent on January 10, 2012. The Landlord stated that the Notice states that the Tenant was required to move out by January 20, 2012 or pay the full amount of the outstanding rent within five days of receiving the Notice.

The Landlord stated that the Tenant received the Notice and paid \$600.00 on January 17, 2012 towards the outstanding rent. The Landlord stated that the Tenant still owed \$1,400.00 in outstanding rent plus late fees for December and January. As the Tenant did not pay the full amount owing and did not move out on January 20, 2012, as required by the Notice, the Landlord filed an Application for Dispute Resolution on January 23, 2012, which they served on the Tenant in person on January 24, 2012.

The Landlord testified that the Tenant remained in the rental unit. The Landlord testified that while they were waiting for the hearing, they served another 10 Day Notice to End Tenancy on the Tenant for non-payment of rent for February 01, 2012 as well. The Landlord stated that the Tenant failed to pay the rent for February and finally moved out by February 07, 2012. The Landlord stated that they are not in the process of cleaning and repairing the rental unit and they are in the process of trying to find new tenants. The Landlord states that they have had a rental income loss for February 2012 due to the Tenant failing to move out by January 20, 2012 as required by the initial 10 Day

Notice to End Tenancy provided to the Tenant. The Landlord submitted a copy of the 10 Day Notice to End Tenancy which they issued to the Tenant on January 10, 2012.

The Landlord requests a monetary order for \$2,450.00 for outstanding rent for December 2011 (\$400.00) and January 2012 (\$1,000.00); rental income loss for February 2012 (\$1,000.00); and \$50.00 for late rent fees for December (\$25.00) and January (\$25.00), pursuant to the tenancy agreement.

The Landlord has also applied for reimbursement of the \$50.00 filing fee for this proceeding.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

I accept the Landlord's evidence that the Tenant has moved out of the rental unit on February 07, 2012 and the Landlord now has possession of the rental unit.

Section 26 of the Act requires a Tenant to pay rent when it is due under the tenancy agreement. In this case, the tenancy agreement submitted into evidence by the Landlord states that rent is due on the first of the month. I find that the Tenant failed to pay rent in full for December 2011 (\$400.00) and January 2012 (\$1,000.00), and did not vacate the rental unit within 10 days of service of the Notice, causing the Landlord to have a rental income loss of \$1,000.00 for February 2012 as well. I also find that the Tenant owes the Landlord \$50.00 for December (\$25.00) and January (\$25.00) as the rent was late and not paid and that the tenancy agreement specifies that these amounts are owed, and the Act allows for this type of fee.

I find that the Landlord has established a monetary claim of \$2,450.00 for rent, rental income loss, and late fees.

As the Landlord has succeeded in their Application, I find that the Landlord is entitled to recover the \$50.00 fee for this proceeding. I have added this amount to the monetary order against the Tenant bringing the total amount owing to \$2,500.00

I order that the Landlord retain the security deposit (\$500.00), in partial satisfaction of the claim and I grant the Landlord an order under section 67 for the balance due of **\$2,000.00.**

Conclusion

I find that the Landlord may keep the security deposit in partial satisfaction of the claim and is granted a monetary order for the balance due in the amount of **\$2,000.00.** This order must be served on the Tenant and may be filed in the Provincial Court (Small Claims).

The order accompanies the Landlord's copy of this decision.

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: February 14, 2012.

Residential Tenancy Branch