



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 was convened in response to an application by the Landlord pursuant to the *Residential Tenancy Act* (the "Act") for Orders as follows:

1. An Order of Possession - Section 55;
2. A Monetary Order for unpaid rent - Section 67;
3. An Order to recover the filing fee for this application - Section 72.

I accept the Landlord's evidence that the Tenant was served with the application for dispute resolution and notice of hearing by personal service on January 13, 2012 in accordance with Section 89 of 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. At the onset, the Landlord stated that as the Tenants have moved out of the unit, an Order of Possession is no longer required. Accordingly, this part of the application is dismissed.

Issue(s) to be Decided

Is the Landlord entitled to the monetary amounts claimed?

Background and Evidence

The tenancy began on October 11, 2011. Rent in the amount of \$885.00 is payable in advance on the first day of each month. At the outset of the tenancy, the Landlord collected a security deposit from the Tenant in the amount of \$442.50. The Tenant failed to pay full rent for the month of December 2011 and the Parties agreed that the

remainder of December rent owing in the amount of \$440.00 along with January 2012 rent would be paid by December 31, 2011. On January 1, 2012, the Tenant had not paid the rent as agreed and on January 2, 2012 the Landlord personally served the Tenant with a notice to end tenancy for non-payment of rent with an effective move-out date of January 14, 2012. The Tenant moved out of the unit on either January 16 or 17 but did not inform the Landlord and did not return the keys. The Landlord states that he has possession of the unit but that the Tenants left the unit unclean and damaged. The quantum of the Landlord's monetary claim is **\$1,345.00**.

Analysis

Section 44 of the Act sets out when a tenancy will end. Where a Landlord has elected to end a tenancy because of non-payment of rent, a tenant is not liable to pay rent after the tenancy agreement has ended. If however, the tenant remains in possession of the premises, the tenant will be liable to pay occupation rent on a per diem basis until the landlord recovers possession of the premises. The Landlord in this case has elected to end the tenancy agreement for non-payment of rent by serving a 10 day notice to end tenancy with a move-out date of January 14, 2012 and the Tenants moved no later than January 17, 2012. As such, the Tenant is liable for January 2012 rent to January 17, 2012. The per diem rate for January rent is \$28.55 ($885.00 / 31$). I find the Landlord has established and is entitled to unpaid rent for December 2012 in the amount of **\$440.00** and unpaid January rent in the amount of **\$485.35** (28.55×17). The Landlord is also entitled to recovery of the \$50 filing fee, for a total entitlement of **\$975.35**. The **security deposit** plus interest in the amount of **\$442.50** is set off from the entitlement leaving the amount of **\$532.85** owing by the Tenant to the Landlord for unpaid rent.

The Landlord is at liberty to make an application for loss or compensation arising from the Tenant's leaving the unit unclean and/or damaged.

Conclusion

I order that the Landlord retain the **deposit** and interest of \$442.50 in partial satisfaction of the claim and I grant the Landlord an order under Section 67 of the Act

for the balance due of **\$532.85**. If necessary, this order may be filed in the Small Claims Court and enforced 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: February 01, 2012.

Residential Tenancy Branch