



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR MNR MNSD MNDC FF

Preliminary Issues

Upon review of the Landlord's application for dispute resolution the Landlord confirmed her intent on seeking money owed or compensation for damage or loss under the act regulation or tenancy agreement, by writing "*Please add pre-agreed late charge of \$25.00*" under the monetary amount being claimed of \$1,195.00 on her original application form and by writing in the details of the dispute that she was seeking compensation for July 2012 rent.

Based on the aforementioned I find the Landlord's intention of seeking to recover the late charge and income for July 2012 was clearly indicated on their application form and it was an oversight and/or clerical error in not selecting the box *for money owed or compensation for damage or loss under the Act, regulation, or tenancy agreement* when completing the application. Therefore I approve the Landlord's request to amend their application, pursuant to section 64(3)(c) of the Act.

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord to obtain an Order of Possession for unpaid rent and a Monetary Order for unpaid rent or utilities, to keep all or part of the security and or pet deposit, for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, and to recover the cost of the filing fee from the Tenant for this application.

The Landlord submitted documentary evidence which indicates the Tenant was personally served with copies of the Landlord's application for dispute resolution, Notice of dispute resolution hearing, and the Landlord's evidence, on June 14, 2012 in person. The Landlord affirmed the Tenant signed this document acknowledging receipt of their hearing package. Based on the submissions of the Landlord I find the Tenant was sufficiently served notice of this proceeding, in accordance with the Act; therefore I proceeded in the Tenant's absence.

Issue(s) to be Decided

1. Is the Landlord entitled to an Order of Possession?
2. Is the Landlord entitled to a Monetary Order?

Background and Evidence

The Landlord submitted copies of proof of service documents, a 10 Day Notice to end tenancy, and the tenancy agreement into evidence.

The Landlord confirmed the parties entered into a fixed term tenancy that began on January 16, 2009 and switched to a month to month tenancy after January 1, 2010. Rent is payable on the first of each month and effective June 1, 2012 rent was increased to \$880.00 per month. On January 16, 2009 the Tenant paid \$425.00 as the security deposit plus \$425.00 as the pet deposit.

The Landlord stated the Tenant has been paying rent in small amounts and after he failed to pay the full rent that was due June 1, 2012 a 10 Day Notice to end tenancy was posted on the Tenant's door on June 2, 2012, indicating \$345.00 was still outstanding for June 1, 2012 rent. Since issuing the Notice the Tenant has made payments for which the Landlord issued receipts stating the payments were received for "use and occupancy only" as follows:

Balance due at June 2, 2012	\$345.00
Payment June 15, 2012	- \$300.00
Payment June 27, 2012	<u>- \$300.00</u>
Credit balance at June 27, 2012 (\$255.00)

The Landlord has sought to regain possession of the unit as soon as possible and to recover the late payment charges for June 1, 2012 as per section 12 of their tenancy agreement. They also seek payment for use and occupancy for the month of July 2012.

Analysis

Order of Possession – When a tenant receives a 10 Day Notice to end tenancy for unpaid rent they have (5) days to either pay the rent in full or to make application to dispute the Notice or the tenancy ends.

In this case the Tenant made payments throughout the month, after the five day time period. Therefore, the Tenant is conclusively presumed to have accepted that the

tenancy ends on the effective date of the Notice, **June 15, 2012**, and must vacate the rental unit to which the notice relates pursuant to section 46(5) of the *Act*. Accordingly, I approve the Landlord's request for an Order of Possession.

Claim for unpaid rent - The Landlord claimed unpaid rent of \$345.00 that was due June 1, 2012. In this case the Tenant made payments towards these arrears paying them in full by June 27, 2012, after the effective date of the 10 Day Notice. The payments were received for use and occupancy only and therefore did not reinstate the tenancy.

Based on the aforementioned, I find the Landlord's claim for June 2012 unpaid rent to be fully satisfied by the Tenant and no monetary award is warranted for June 2012.

July Use & Occupancy – As noted above this tenancy ended **June 15, 2012**, in accordance with the 10 Day Notice. Therefore I find the Landlord is seeking money for use and occupancy of the unit and not rent for July 2012.

The Tenant has prepaid \$255.00 towards use and occupancy for July 2012 which I calculate to be less than 9 days based on a daily rate of \$28.90. The Landlord will not regain possession of the unit until after service of the Order of Possession and has the obligation to attempt to re-rent the unit as soon as possible. Therefore I award the Landlord **\$178.50** ($\$28.90 \times 15 - 255.00$) for use and occupancy of the unit up to **July 15, 2012**.

Late Payment Fees. The evidence supports that the tenancy agreement provides for the Landlord to collect late payment charges of \$25.00 when rent is not paid on the first of each month, in accordance with section 7 of the Residential Tenancy Regulation.

The Landlord has applied for late payment fees for June and July 2012 however this tenancy ended June 15, 2012 in accordance with the 10 Day Notice. The tenancy agreement is no longer in effect after the tenancy ends therefore the Landlord is not entitled to late payment charges for occupancy after the end of the tenancy. Accordingly I award the Landlord late payment charges for June 2012 in the amount of **\$25.00**.

The Landlord has succeeded with their application; therefore I award recovery of the **\$50.00** filing fee.

Monetary Order – I find that the Landlord is entitled to a monetary claim and that this claim meets the criteria under section 72(2)(b) of the *Act* to be offset against the Tenant's security deposit plus interest as follows:

Use and Occupancy for July 2012	178.50
Late payment fee	25.00
Filing Fee	<u>50.00</u>
SUBTOTAL	\$ 253.50
LESS: Security Deposit \$425.00 + Interest 0.00	-425.00
Pet Deposit \$425.00 + Interest 0.00	<u>-425.00</u>
Offset amount held in trust	<u>(\$ 596.50)</u>

The balance of \$596.50 is comprised of \$425.00 security deposit plus \$171.50 pet deposit which are to remain in trust with the Landlord until the Landlord regains possession of the rental unit at which time the Landlord is required to disburse the **\$596.50** in accordance with section 38 of the Act.

Conclusion

I HEREBY FIND the Landlords are entitled to an Order of Possession effective **July 15, 2012, at 1:00 p.m.** This Order is legally binding and must be served upon the Tenant.

The Landlord may retain \$253.50 from the pet deposit currently held in trust.

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: July 05, 2012.

Residential Tenancy Branch