



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 dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- an Order of Possession for unpaid rent pursuant to section 55;
- a monetary order for unpaid rent pursuant to section 67;
- authorization to retain all or a portion of the tenants' security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover the filing fee for this application from the tenants pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present evidence and to make submissions. The landlord testified that she handed a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) to Tenant QA on July 6, 2012. The tenants in attendance at this hearing (the tenants attending) confirmed that they received the 10 Day Notice, although Tenant QA did not forward it to them for several days. The landlord entered oral and written evidence that she sent each of the tenants a copy of the landlord's dispute resolution hearing package by registered mail on July 19, 2012. She provided a copy of the Canada Post Tracking Numbers and Customer Receipts to confirm these mailings. The tenants attending confirmed that they had received the landlord's hearing package and written evidence package. I am satisfied that the landlord served the above documents to the tenants in accordance with the *Act*.

At the commencement of the hearing, the tenants attending testified that they vacated the rental unit by July 31, 2012. They said that there were still possessions belonging to Tenant QA in the premises at that time. The landlord testified that there remain many possessions still in the rental unit which she will be required to store and that cleanup will occur after the possessions are removed. The landlord stated that she already has possession of the rental unit and there was no need to proceed with her application for an Order of Possession. At the landlord's request, the landlord's application to end this tenancy and obtain an Order of Possession is withdrawn.

Issues(s) to be Decided

Is the landlord entitled to a monetary award for unpaid rent? Is the landlord entitled to retain all or a portion of the tenants' security deposit in partial satisfaction of the monetary award requested? Is the landlord entitled to recover the filing fee for this application from the tenants?

Background and Evidence

This tenancy was established by way of a three-month fixed term tenancy agreement that commenced on November 1, 2011. When the initial term expired, the tenancy continued as a periodic tenancy. Monthly rent was set at \$750.00, payable in advance on the first of each month. The landlord continues to hold the tenants \$375.00 security deposit paid on November 3, 2011.

The landlord's application for a monetary award of \$1,385.00 included the following:

Item	Amount
December 2011 Late Fee	\$25.00
January 2012 Late Fee	25.00
Unpaid Portion of July 2012 Rent	560.00
July 2012 Late Fee	25.00
Unpaid August 2012 Rent	750.00
Total Monetary Award Requested	\$1,385.00

The landlord also applied for the recovery of the \$50.00 filing fee for this application.

At the hearing, the landlord gave undisputed testimony that she has not received any payments from any of the tenants towards this tenancy since she issued the 10 Day Notice. The tenants attending confirmed that no further payments have been made. The tenants attending did not dispute the landlord's claim for any of the above items. They said that the only payment made for July 2012 rent was the \$200.00 paid by Tenant MM, her portion of the monthly rent.

The landlord testified that the premises will require considerable work to restore it to a state where the rental unit can be re-rented to another tenant.

Analysis

Based on the landlord's undisputed oral and written evidence, I find that the landlord is entitled to recover rental losses of \$560.00 for July 2012 and the late fees for December 2011, January 2012 and July 2012. I also allow the landlord's application for unpaid rent of \$750.00 for August 2012 as I find it unlikely that the landlord will be able to

remove and store the remaining possessions, clean and repair the premises, restore it to a rentable condition, in time to obtain rental payments from a new tenant for August 2012. The landlord is at liberty to apply for damage and losses arising out of this tenancy once she has completed the work to restore the rental unit to a rentable condition.

I allow the landlord to retain the tenants' security deposit plus applicable interest in partial satisfaction of this monetary award. No interest is payable over this period. As the landlord has been successful in this application, I allow the landlord to recover the \$50.00 filing fee from the tenants.

Conclusion

The landlord's application for an Order of Possession is withdrawn.

I issue the following monetary Order in the landlord's favour which enables the landlord to recover unpaid rent, late fees and the filing fee and to retain the tenants' security deposit:

Item	Amount
December 2011 Late Fee	\$25.00
January 2012 Late Fee	25.00
Unpaid Portion of July 2012 Rent	560.00
July 2012 Late Fee	25.00
Unpaid August 2012 Rent	750.00
Less Security Deposit	-375.00
Filing Fee	50.00
Total Monetary Order	\$1,060.00

The landlord is provided with these Orders in the above terms and the tenant(s) must be served with a copy of these Orders as soon as possible. Should the tenant(s) fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders 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: August 09, 2012

Residential Tenancy Branch