



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

Landlord: OPR, MNR, MNSD, FF
Tenant: DRI, CNR, FF

Introduction

This hearing was convened by way of conference call in response to applications made by the landlord and by the tenant. The landlord has applied for an Order of Possession for unpaid rent or utilities, for a monetary order for unpaid rent or utilities, for an order permitting the landlord to keep all or part of the pet damage deposit or security deposit, and to recover the filing fee from the tenant for the cost of the application. The tenant has disputed an additional rent increase, has applied for an order cancelling a notice to end tenancy for unpaid rent or utilities, and to recover the filing fee from the landlord for the cost of the application.

An agent for the landlord company attended the conference call hearing, gave affirmed testimony and provided evidentiary material prior to the commencement of the hearing. However, despite making an application for dispute resolution, and despite being served with the Landlord's Application for Dispute Resolution and notice of hearing documents by registered mail on August 14, 2012, the tenant did not attend. The landlord provided evidence of having sent the documents on that date and in that manner, and I accept that the tenant has been served in accordance with the *Residential Tenancy Act*.

The tenant did not attend the hearing to provide any testimony or evidence with respect to the tenant's application, and therefore, the tenant's application is hereby dismissed in its entirety without leave to reapply. All evidence and the testimony of the landlord's agent has been reviewed and is considered in this Decision.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession for unpaid rent or utilities?

Is the landlord entitled to a monetary order for unpaid rent or utilities?

Is the landlord entitled to keep all or part of the pet damage deposit or security deposit in full or partial satisfaction of the claim?

Background and Evidence

The landlord's agent testified that this fixed term tenancy began on September 1, 2011 and expired on August 31, 2012, and then reverted to a month-to-month tenancy. Rent in the amount of \$865.00 per month is payable in advance on the 1st day of each month, which was increased to \$880.00 effective September 1, 2012. The tenancy agreement also provides for a parking fee in the amount of \$25.00 per month also payable on the 1st day of each month. On August 19, 2011 the landlord collected a security deposit from the tenant in the amount of \$432.50 and no pet damage deposit was collected. The tenant still resides in the rental unit and the landlord still holds the security deposit in trust. A copy of the notice of rent increase was also provided for this hearing.

The landlord's agent further testified that the tenant's rent is paid by way of pre-authorized debit. If the debit is returned for insufficient funds, the landlord would be notified on or about the 9th or 10th of each month. The tenancy agreement, a copy of which was provided for this hearing also provides for an administrative fee of \$25.00 each for late payments or returned or N.S.F. cheques, plus the amount of any service fees charged by a financial institution to the landlord.

The landlord's agent testified that the tenant failed to pay rent when it was due for the month of August, 2012. The landlord served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities by personally handing it to the tenant on August 6, 2012. A copy of the notice was provided for this hearing and it is dated August 6, 2012 and contains an effective date of vacancy of August 16, 2012 for failure to pay \$940.00 for rent, parking and a late fee that was due on August 1, 2012.

The tenant further failed to pay any rent for the month of September, 2012, and the landlord claims an Order of Possession as well as a monetary order in the amount of \$865.00 for August rent, \$880.00 for September rent, N.S.F. fees in the amount of \$25.00 for each of the 2 months, \$25.00 for late fees for each of the 2 months and \$25.00 per month for parking. When questioned about the fees, the landlord's agent stated that the fees charged by the landlord's financial institution are more than \$25.00 but provided no evidence of that.

Although the landlord has not made a claim on the application for dispute resolution for liquidated damages, the landlord's agent testified that liquidated damages are claimed because the tenant did not pay rent for the month of August, 2012 and the fixed term expires on August 31, 2012.

Analysis

I have reviewed the material provided by the parties, and I accept that the tenant failed to pay rent for the months of August and September, 2012 and the landlord is entitled to a monetary order in the amount of \$1,745.00 for unpaid rent as well as \$50.00 for parking. I also find that the tenant is liable for a total of \$50.00 for late fees as set out in the tenancy agreement. However, with respect to the landlord's claim for \$25.00 for each of 2 months for N.S.F. fees, the regulations state that a landlord may charge a service fee charged by a financial institution to the landlord for the return of a tenant's cheque, and a fee of not more than \$25.00 for the return of a tenant's cheque by a financial institution or for late payment of rent. The landlord has not provided any evidence of the fees charged by the financial institution and therefore I find that the landlord has failed to establish that amount.

With respect to the landlord's request for liquidated damages, the tenancy did not end prior to August 31, 2012, being the end of the fixed term, and therefore, I find that the landlord has not established a claim for liquidated damages.

I have reviewed the notice to end tenancy provided by the landlord, and I find that the landlord is entitled to an Order of Possession. The *Residential Tenancy Act* states that once a notice to end tenancy has been served, the tenant must pay the rent in full or dispute the notice within 5 days. If the tenant does neither, the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice. In this case, the notice contains an effective date of vacancy of August 16, 2012. The tenant disputed the notice but did not attend the hearing.

Since the landlord has been successful with the application, the landlord is also entitled to recovery of the \$50.00 filing fee for the cost of the application.

In summary, I find that the landlord is entitled to an Order of Possession, and I order the landlord to keep the security deposit in partial satisfaction of the claim, and I grant a monetary order in favor of the landlord for the difference in the amount of \$1,462.50, calculated as follows:

- August rent: \$865.00
- August parking: \$25.00
- Late/NSF fees for August: \$25.00
- September rent: \$880.00
- September parking \$25.00
- Late fees for September: \$25.00
- Filing fees: \$50.00
- Less the security deposit held in trust \$432.50

Conclusion

For the reasons set out above, the tenant's application is hereby dismissed in its entirety without leave to reapply.

I hereby grant an Order of Possession in favour of the landlord effective on 2 days notice to the tenant.

I hereby order the landlord to keep the security deposit in the amount of \$432.50 in partial satisfaction of the claim, and I grant a monetary order in favour of the landlord for the difference pursuant to section 67 of the *Residential Tenancy Act* in the amount of \$1,462.50.

This order is final and binding on the parties and may be enforced.

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: September 12, 2012.

Residential Tenancy Branch