



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 was convened by way of conference call in response to the landlords application for an Order of Possession for unpaid rent and utilities; for a Monetary Order for unpaid rent or utilities; for an Order permitting the landlord to keep all or part of the tenants security deposit; and to recover the filing fee from the tenant for the cost of this application. At the outset of the hearing the landlord advised that the tenant is no longer residing in the rental unit, and therefore, the landlord withdraws the application for an Order of Possession.

Service of the hearing documents, by the landlord to the tenant, was done in accordance with section 89 of the *Act*, and the tenant was served in person by the landlord with a witness on September 18, 2012.

The landlord appeared, gave sworn testimony, was provided the opportunity to present evidence orally, in writing, and in documentary form. There was no appearance for the tenant, despite being served notice of this hearing in accordance with the *Residential Tenancy Act*. All of the testimony and documentary evidence was carefully considered.

Issue(s) to be Decided

- Is the landlord entitled to a Monetary Order for unpaid rent and utilities?
- Is the landlord entitled to keep the security deposit?

Background and Evidence

The landlord testifies that this tenancy started on December 21, 2011 for a fixed term due to expire on December 31, 2012. The tenant moved from the rental unit on September 30, 2012. Rent for this unit was \$1,125.00 per month and was due on the first day of each month. The tenant paid a security deposit of \$562.50 on December 15, 2011.

The landlord testifies that the tenant failed to pay rent for September, 2012. A 10 Day Notice to End Tenancy was served upon the tenant on September 02, 2012 by posting it to the door. This Notice informed the tenant that rent is owed for September of \$1,125.00 and the tenant has five days to either pay the rent or dispute the Notice or the tenancy will end on September 15, 2012. The landlord testifies that the tenant did not pay the rent or dispute the Notice and did not move out until September 30, 2012.

The landlord testifies that she started to advertise the unit for rent on local internet sites to attempt to re-rent it for October, 2012. The landlord testifies she had a few showings but the unit remains unrented. The landlord seeks to recover a loss of rent for October, 2012 of \$1,125.00.

The landlord seeks to recover a \$25.00 late fee from the tenant for September's rent. The landlord agrees there is no mention of this charge being applied in the tenancy agreement.

The landlord testifies that the tenant had the gas and electric in her name for both units and her rent was lowered to account for this. The landlord testifies that the gas and electric were cut off as the tenant had not paid her bills at that time so the landlord had to pay to have the gas reconnected so the lower tenant could continue to get hot water. The landlord seeks to recover the sum of \$169.07 for the reconnection fee, taxes and charges for September's gas consumption. The landlord has provided a copy of this

utility bill in evidence. The landlord testifies that the tenant did pay the other outstanding utility bills and the landlord therefore reduces her claim from \$3,164.80 to \$2,419.07.

Analysis

The tenant did not appear at the hearing to dispute the landlords' claims, despite having been given a Notice of the hearing; therefore, in the absence of any evidence from the tenant, I have considered the landlords documentary evidence and affirmed testimony before me. S. 26 of the *Residential Tenancy Act (Act)* states a tenant must pay rent on the day it is due. The landlord has testified that rent is due on the 1st day of each month and the tenant failed to pay rent for September. The tenant moved from the rental unit on September 30, 2012 and the unit could not be re-rented for October. Therefore in accordance with the Residential Tenancy Policy Guidelines #3 which states, in part, that in a month to month tenancy, if the tenancy is ended by the landlord for non-payment of rent, the landlord may recover any loss of rent suffered for the next month as a notice given by the tenant during the month would not end the tenancy until the end of the subsequent month. Therefore, I find the landlord is entitled to recover a loss of rent for October, 2012. The total amount of unpaid rent is therefore **\$2,250.00**.

With regard to the landlords claim to recover a late fee; the landlord must notify a tenant that these fees will be applied if the rent is late by making mention of it in the tenancy agreement. As no agreement is in place then the landlords claim for \$25.00 late fee is dismissed.

With regard to the landlords claim for unpaid utilities; I am satisfied that the landlord had to pay a fee of **\$169.07** to reconnect the gas which included other charges and a portion of gas used for September, 2012. Consequently, the landlord is entitled to recover this from the tenant.

The landlord is therefore entitled to keep the tenants security deposit of **\$562.50** pursuant to s. 38(4)(b) of the *Act* and this sum will be offset against the unpaid rent.

As the landlord has been largely successful with her amended claim I find the landlord is entitled to recover the **\$50.00** filing fee from the tenant pursuant to section 72(1) of the *Act*. The landlord will receive a Monetary Order pursuant to s. 67 of the *Act* for the following amount:

Unpaid rent for September and October, 2012	\$2,250.00
Utility fee	\$169.07
Less security deposit	(-\$562.50)
Filing fee	\$50.00
Total amount due to the landlord	\$1,906.57

Conclusion

I HEREBY FIND largely in favor of the landlords' monetary claim. A copy of the landlords' decision will be accompanied by a Monetary Order for **\$1,906.57**. The order must be served on the tenant and is enforceable through the Provincial Court 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: October 23, 2012.

Residential Tenancy Branch