

DECISION

Dispute Codes OPR, MNR, MNDC, FF

Introduction

This is an application filed by the Landlord for an order of possession and a monetary order for unpaid rent, for money owed or compensation for damage or loss and the recovery of the filing fee.

The Landlord attended the hearing by conference call and gave undisputed testimony. The Tenant did not attend. The Landlord states that the Tenant provided an address for service in Ontario. The Landlord states that the notice of hearing and evidence package was sent by Canada Post Registered Mail on September 26, 2012 and was returned just before the hearing date as undeliverable as it was unclaimed after leaving notices to pick it up. The Landlord provided the Canada Post Registered Mail tracking number in his direct testimony. I accept the Landlord's undisputed testimony and find that the Tenant was properly served with the notice of hearing and evidence package submitted.

The Landlord indicated in his direct testimony that the Tenant had vacated and no longer requires an order of possession. As such, this portion of the application is withdrawn and requires no action.

Issue(s) to be Decided

Is the Landlord entitled to a monetary order?

Background, Evidence and Analysis

This Tenancy began on August 1, 2012 on a fixed term tenancy until July 31, 2013 as shown by the submitted copy of the signed tenancy agreement. The monthly rent was \$1,600.00 payable on the 1st of each month. A security deposit of \$800.00 was paid on July 17, 2012.

The Landlord states that the Tenant was served with a 10 day notice to end tenancy issued for unpaid rent or utilities for \$1,600.00 dated September 17, 2012 which was personally served on the Tenant on the same date. The effective date of the notice is September 28, 2012. The Landlord states that the Tenant provided a service address

in Ontario and wrote down their service address on the 10 day notice, which the Landlord then completed by signing and dating it.

The Landlord seeks a monetary order for \$3,300.00 consisting of \$1,600.00 for unpaid September 2012 rent, \$1,600.00 as a penalty based upon addendum condition #1 for breaching of the Tenancy Agreement and \$50.00 for a NSF charge based upon addendum condition #6.

I accept the undisputed testimony of the Landlord and find that the Tenant was properly served with the 10 day notice in person on September 17, 2012. The Tenant did not pay any rent or file an application for dispute resolution to dispute the notice. The Tenant is conclusively presumed to have accepted that the Tenancy was at an end. Based upon the above undisputed facts, I find that the Landlord has established a claim for unpaid rent of \$1,600.00 for September 2012.

As for the Landlord's claim for the \$1,600.00 Penalty for breaching the Tenancy Agreement and the \$50.00 NSF fee, I find that these terms of the addendum are unconscionable and unenforceable. The Landlord has provided no details of liquidated damages or of any attempts to mitigate the loss of the Tenancy for the Tenancy Breach. I also find that the Landlord's NSF addendum condition to be contrary to the Act as it only allows for a \$25.00 NSF charge. The Landlord has failed to provide any details of a NSF charge incurred. These portions of the Landlord's claim are dismissed.

The Landlord has established a total monetary claim of \$1,600.00. The Landlord is also entitled to recovery of the \$50.00 filing fee. I order that the Landlord retain the currently held \$800.00 security deposit in partial satisfaction and I grant a monetary order under section 67 for the balance due of \$850.00.

Conclusion

The Landlord is granted a monetary order for \$850.00.
The Landlord may retain the security deposit.

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 30, 2012.

Residential Tenancy Branch