



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR MNR MNDC FF
 CNC OPT FF

Preliminary Issues

Upon review of the Landlord's application he confirmed that he was seeking compensation of \$25.00 for the September, 2012 late payment fee as indicated in the details of the dispute on the second page of his application. The Landlord requested that his application be amended to include a request for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement as he was not aware he needed to check off that box on the application form.

Based on the foregoing, I find the Tenant was aware of the Landlord's intent to claim the late payment charge as it is clearly indicated in the details of dispute. Therefore I amend the application to include the request for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, in accordance with section 64 of the *Residential Tenancy Act*.

Introduction

This hearing dealt with cross applications for Dispute Resolution filed by both the Landlord and the Tenant.

The Landlord filed seeking an Order of Possession for unpaid rent, a Monetary Order for unpaid rent or utilities, 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 Tenant filed seeking an Order to cancel the notice to end tenancy for cause, to obtain an Order of Possession for the tenant, and to recover the cost of the filing fee from the Landlord for this application.

Service of the original hearing documents by the Landlord to the Tenant was done in accordance with section 89 of the *Act*, served personally on September 19, 2012.

Based on the submission of the Landlord I find the Tenant was sufficiently served notice of this proceeding in accordance with the Act.

The Landlord appeared, gave affirmed testimony, was provided the opportunity to present his evidence orally, in writing, and in documentary form.

No one appeared on behalf of the Tenant despite the Tenant being served with notice of the Landlord's application in accordance with the Act and despite having her own application for dispute resolution scheduled to be heard at the same date and time. Based on the foregoing I proceeded in the Tenant's absence.

Issue(s) to be Decided

1. Has the Landlord regained possession of the Unit?
2. Is the Landlord entitled to a Monetary Order?
3. Should the Tenant's application be dismissed without leave to reapply?

Background and Evidence

The Landlord submitted documentary evidence which included, among other things, copies of the tenancy agreement, a 10 Day Notice to end tenancy for unpaid rent, a written statement, and a copy of a 1 Month Notice to end tenancy for cause.

The Landlord advised that the parties entered into a written month to month tenancy that began on August 1, 2012. Rent is payable on the first of each month in the amount of \$590.00 and on or before August 1, 2012 the Tenant paid \$295.00 as the security deposit.

The Landlord submitted that when the Tenant failed to pay the September 1, 2012 rent he posted a 10 Day Notice to the Tenant's door on September 2, 2012 for \$590.00 unpaid rent.

The Landlord advised that the Tenant vacated the property by 6:00 p.m. on October 1, 2012 and left the keys inside the rental unit. Therefore, he was withdrawing his request for an Order of Possession. He wishes to proceed with his monetary order for September 2012 rent plus the \$25.00 late payment fee as provided for under section 5 of their tenancy agreement.

Analysis

I find that in order to justify payment of damages or losses under section 67 of the *Act*, the Applicant Landlord would be required to prove that the other party did not comply

with the *Act* and that this non-compliance resulted in costs or losses to the Applicant pursuant to section 7.

The Landlord withdrew his application for an Order of Possession.

I find that the Landlord has met the requirements to claim for unpaid rent of \$590.00 that was due September 1 2012, pursuant to section 26 of the *Act* which stipulates that a tenant must pay rent when it is due in accordance with the tenancy agreement. I accept the undisputed evidence that the rent remains unpaid and I award the Landlord **\$590.00**.

The evidence supports that section 5 of the tenancy agreement provides for the Landlord to collect late payment charges of \$25.00, in accordance with section 7 of the Residential Tenancy Regulation. As the Tenant has been late in paying their September 1, 2012 rent, the Landlord is entitled to claim the late payment fee. Accordingly I award the Landlord **\$25.00**.

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

Any deposits currently held in trust by the Landlord are to be administered in accordance with Section 38 of the *Residential Tenancy Act*.

Tenant's Application

Section 61 of the *Residential Tenancy Act* states that upon accepting an application for dispute resolution, the director must set the matter down for a hearing and that the Director must determine if the hearing is to be oral or in writing. In this case, the hearing was scheduled for an oral teleconference hearing.

While the Landlord attended the hearing by way of conference call, the Tenant did not.

Rule 10.1 of the Rules of Procedure provides as follows:

10.1 Commencement of the hearing The hearing must commence at the scheduled time unless otherwise decided by the arbitrator. The arbitrator may conduct the hearing in the absence of a party and may make a decision or dismiss the application, with or without leave to re-apply.

In the absence of the applicant Tenant, the telephone line remained open while the phone system was monitored for ten minutes and no one on behalf of the applicant Tenant called into the hearing during this time.

Accordingly, in the absence of any evidence or submissions from the applicant I order the application dismissed without liberty to reapply.

Conclusion

The Landlord has been awarded a Monetary Order for **\$665.00** (\$590.00 + \$25.00 + \$50.00). This Order is legally binding and must be served upon the Tenant.

I HEREBY DISMISS The Tenant's application, without leave to reapply.

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 05, 2012.

Residential Tenancy Branch