



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; for a Monetary Order for unpaid rent; for an Order permitting the landlord to keep all or part of the tenants security deposit; and to recover the filing fee from the tenants for the cost of this application. At the outset of the hearing the landlord advised that the tenants are 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 tenants, was done in accordance with section 89 of the *Act*, sent via registered mail on October 26, 2012. Mail receipt numbers were provided in the landlord's documentary evidence. The tenants are deemed to be served the hearing documents on the fifth day after they were mailed as per section 90(a) of the *Act*.

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 tenants, 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?
- Is the landlord entitled to keep the security deposit?

Background and Evidence

The landlord testifies that this month to month tenancy started on July 01, 2012. The tenants moved from the rental unit on November 12, 2012. Rent for this unit was \$800.00 per month and was due on the first day of each month. The tenant paid a security deposit of \$400.00 on or about July 01, 2012.

The landlord testifies that the tenants failed to pay all the rent for September, 2012 leaving an unpaid balance of \$150.00. The tenants failed to pay rent for October, 2012 of \$800.00. A 10 Day Notice to End Tenancy was served upon the tenants in person on October 11, 2012. This Notice informed the tenants that rent is owed for September and October of \$950.00 and the tenants had five days to either pay the rent or dispute the Notice or the tenancy will end on October 21, 2012. The landlord testifies that the tenants did not pay the rent or dispute the Notice and failed to pay rent for November, 2012. The total amount of unpaid rent is \$1,750.00.

The landlord seeks to keep the tenants security deposit of \$400.00 to offset against the unpaid rent. The landlord also seeks to recover the \$50.00 filing fee from the tenants.

Analysis

The tenants 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 tenants, I have considered the landlords documentary evidence and affirmed testimony before me. Section 26 of the *Act* states:

A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

The landlord has testified that rent is due on the 1st day of each month and the tenant failed to pay rent for September, October and November, 2012. The tenants moved from the rental unit on November 12, 2012 and the unit could not be re-rented for November due to damages. 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 November, 2012. The landlord has therefore established his claim to recover unpaid rent of **\$1,750.00** pursuant to s. 67 of the *Act*.

The landlord is therefore entitled to keep the tenants security deposit of **\$400.00** pursuant to s. 38(4)(b) of the *Act* and this sum will be offset against the unpaid rent.

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

| | |
|----------------------------------|-------------|
| Unpaid rent | \$1,750.00 |
| Less security deposit | (-\$400.00) |
| Filing fee | \$50.00 |
| Total amount due to the landlord | \$1,400.00 |

Conclusion

I HEREBY FIND in favor of the landlord's monetary claim. A copy of the landlord's decision will be accompanied by a Monetary Order for **\$1,400.00**. The order must be served on the tenants 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: November 29, 2012.

Residential Tenancy Branch