



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 dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- an Order of Possession for unpaid rent pursuant to section 55;
- authorization to retain all or a portion of the tenants' security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover his filing fee for this application from the tenants pursuant to section 72.

The tenants did not attend this hearing, although I waited until 3:12 p.m. in order to enable them to connect with this teleconference hearing scheduled for 3:00 p.m. The landlord attended the hearing and was given a full opportunity to be heard, to present evidence and to make submissions. The landlord testified that he handed the tenants a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) on November 10, 2012. He testified that he handed both tenants copies of his dispute resolution hearing package on November 30, 2012. I am satisfied that the landlord served the above documents to the tenants in accordance with the *Act*.

At the commencement of the hearing, the landlord testified that the tenants vacated the rental unit on November 30, 2012, after he served them with his hearing package. As he already has possession of the rental unit, he withdrew his application for an Order of Possession. The landlord's application for an Order of Possession is withdrawn.

The landlord also clarified the contents of the Details of the Dispute section of his application for dispute resolution in which he requested a monetary award of \$795.00. Based on the landlord's sworn oral testimony and the Details of the Dispute he completed on his original application, I am satisfied that the landlord attempted to seek a monetary award for unpaid rent for November 2012 due to the tenants' issuance of an N.S.F. cheque for their rent that month. I am also satisfied that the tenants were aware through their receipt of the landlord's application that he was seeking recovery of unpaid rent for November 2012. In accordance with the powers delegated to me under the *Act*, I have allowed the landlord to correct his application for dispute resolution to include recovery of unpaid rent pursuant to section 67 of the *Act*, in accordance with the Details of the Dispute set out in the landlord's original application.

Issues(s) to be Decided

Is the landlord entitled to a monetary award for unpaid rent? Is the landlord entitled to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary award requested? Is the landlord entitled to recover the filing fee for this application from the tenant?

Background and Evidence

The landlord testified that the tenants entered into a one-year fixed term tenancy agreement commencing on November 1, 2012. Monthly rent was set at \$795.00, payable in advance on the first of each month. The tenants paid a \$397.50 security deposit and a \$397.50 pet damage deposit by way of cheques on October 19, 2012. The landlord testified that the tenants' pet damage deposit cheque and their first rent cheque for November 2012 were returned as N.S.F. by the landlord's bank. The landlord currently holds the tenants' \$397.50 payment for their security deposit. He testified that he has not received any further payments from the tenants.

Analysis

Based on the landlord's undisputed evidence, I find that the landlord is entitled to a monetary award of \$795.00 for unpaid rent for November 2012. I allow the landlord to retain the tenants' \$397.50 security deposit plus applicable interest in partial satisfaction of the monetary award issued in this decision. No interest is payable over this period. As the landlord has been successful in this application, I allow him to recover his filing fee from the tenants.

Conclusion

I issue a monetary Order in the landlord's favour under the following terms, which allows the landlord to recover unpaid rent for November 2012 and his filing fee and to retain the tenants' security deposit:

Item	Amount
Unpaid November 2012 Rent	\$795.00
Less Security Deposit	-397.50
Recovery of Filing Fee for this application	50.00
Total Monetary Order	\$447.50

The landlord is provided with these Orders in the above terms and the tenant(s) must be served with a copy of these Orders as soon as possible. Should the tenant(s) fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders of that Court.

The landlord's application for an Order of Possession is withdrawn.

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: December 20, 2012

Residential Tenancy Branch