



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, FF

Introduction

This hearing was conducted by way of conference call in response to the landlord's application for an Order of Possession for unpaid rent; for a Monetary Order for unpaid rent; 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 *Residential Tenancy Act (Act)* sent via registered mail on November 23, 2012. Copies were sent to the dispute address and the forwarding address provided by the tenants. 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's agent 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 *Act*.

Issue(s) to be Decided

Is the landlord entitled to a Monetary Order to recover unpaid rent?

Background and Evidence

The landlord testifies that this fixed term tenancy started on June 08, 2011 and reverted to a month to month tenancy at the end of the fixed term. Rent for this unit at the end of the tenancy was \$938.70 per month and was due on the first day of each month.

The landlord testifies that the tenants failed to pay rent for November, 2012 of \$938.70. The landlord served the tenants with a 10 Day Notice to End Tenancy on November 13, 2012 by posting the Notice to the tenants' door. This Notice informs the tenants that they have five days to pay the outstanding rent and NSF fee of \$25.00 or apply to dispute the Notice or the tenancy will end on November 26, 2012. The landlord's agent testifies that the tenants did not pay the rent and moved from the rental unit on or about November 14, 2012.

The landlord seeks to recover the NSF fee of \$25.00 as the tenants had put a stop payment on the preauthorised payment set up with their bank for their rent. The landlord's agent testifies that the landlord incurred bank charges of \$25.00 due to this. The landlord's agent states that the tenants would be aware the landlord would charge the tenants for this fee as it is documented in the tenancy agreement between the parties. This agreement has been provided in the landlord's documentary evidence.

Analysis

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.*

Consequently as the tenants have not appeared at the hearing to dispute the landlord's claim I find the tenants owe rent for November, 2012 to the sum of **\$938.70** and the bank fee of **\$25.00** for cancelling the preauthorised rent payment. The landlord has therefore established a claim for a Monetary Order to the sum of **\$963.70** pursuant to s. 67 of the *Act*.

As the landlord has been successful with this claim I find the landlord is also entitled to recover the **\$50.00** filing fee from the tenants pursuant to s. 72(1) of the *Act*.

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 **\$1,013.70**. The order must be served on the respondents 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: January 02, 2013.

Residential Tenancy Branch

