



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNSD, MNDC, FF

Introduction

A substantial amount of documentary evidence, photo evidence, and written arguments has been submitted prior to the hearing. I have thoroughly reviewed all submissions.

I also gave the applicant the opportunity to testify at the hearing.

The applicant testified that the respondent(s) were served with notice of the hearing by registered mail it was mailed December 4, 2012; however the respondent(s) did not join the conference call that was set up for the hearing.

All testimony was taken under affirmation.

Issue(s) to be Decided

This is a request for an order possession based on a notice to end tenancy for nonpayment of rent, a request for a monetary order for \$4410.00, and request for an order for recovery of the filing fee of \$50.00.

The applicant has also requested an order to retain the full security deposit towards the claim.

Background and Evidence

The applicant testified that:

- The tenant failed to pay November 2012 rent and therefore on November 9, 2012 the tenant was served with a 10 day notice to end tenancy.
- The tenant did not comply with that notice and has failed to pay any further rent.
- The tenant subsequently vacated the rental unit on January 2, 2013.
- The tenant's rent was 18 days late in October 2012 and therefore they're asking for \$20.00 per day for a total of \$360.00.

- The tenants rent was late 30 days in November 2012 and therefore they're asking for \$20 per day for a total of \$600.00.
- The tenants November 2012 rent cheque was not honored by the bank and therefore they're asking for an NSF charge of \$100.00.
- The tenant has also failed to pay the rent for the months of November 2012, December 2012, and January 2013, for a total of \$2700.00.
- The tenant has also failed to pay the utilities for the months of November 2012, December 2012, and January 2013, for a total of \$450.00.
- The tenant had also agreed to do some drywall repairs to cover the cost of some previous late fees however the tenant failed to do those repairs and therefore they're also asking for \$150.00 cover those repairs.
- They are also requesting recovery of the \$50.00 filing fee.

Analysis

Late fees

The Residential Tenancy Regulations only allow a maximum late fee for monthly rent payment of \$25.00, and therefore the clause in the tenancy agreement allowing for a daily late fee of \$20.00 is in contradiction of the Residential Tenancy Regulations and therefore is not enforceable.

Therefore the maximum amount I will allow for late fees is \$25.00 for the months of October 2012, November 2012, December 2012, and January 2013, for a total of \$100.00.

NSF fee

The Residential Tenancy Regulations only allow a maximum NSF fee of \$25.00, and therefore the clause in the tenancy agreement allowing for a \$100.00 NSF fee is also in contradiction of the Residential Tenancy Regulations.

Therefore the maximum I will allow for NSF fees is \$25.00.

Rent and utilities

It's my finding that the landlord has shown that the tenant has failed to pay the rent and utilities for the months of November 2012, December 2012, and January 2013 and

therefore I allow the full amount claimed for that outstanding rent and utilities.
(\$3150.00)

Drywall repairs

I deny the claim for drywall repairs, because the tenant agreed to do the drywall repairs to pay off late fees from the month of August 2012, however as stated above the amount of late fees being charged (\$320.00) exceeded the amount allowed under the Residential Tenancy Regulations and therefore are disallowed.

Filing fee

I will allow the request for recovery of the \$50.00 filing fee.

Conclusion

The total amount of the landlord's claim that I have allowed is \$3325.00 and I therefore order that the landlord may retain the full security deposit of \$450.00 and I've issued a monetary order in the amount of \$2875.00.

The remainder of the landlords claim is dismissed 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: January 09, 2013.

Residential Tenancy Branch

