



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Kendell Property Management
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNR, MNSD, FF

Introduction

This hearing was convened by way of conference call in response to the landlord's application for a Monetary Order for unpaid rent and utilities; for an Order permitting the landlord to keep all or part of the tenant's security deposit; and to recover the filing fee from the tenant for the cost of this application.

Service of the hearing documents, by the landlord to the tenant, was done in accordance with section 89 of the *Act*, sent via registered mail on December 04, 2012. Mail receipt numbers were provided in the landlord's documentary evidence. The tenant was 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 tenant, 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 and utilities?
- Is the landlord entitled to keep the security deposit?

Background and Evidence

The landlord's agent testifies that this month to month tenancy started on July 01, 2012. Rent for this unit was \$500.00 per month and was due on the first day of each month. The tenant paid a security deposit of \$250.00 on June 29, 2012.

The landlord's agent testifies that the tenant failed to pay rent for November, 2012. A 10 Day Notice to End Tenancy for unpaid rent and utilities was served upon the tenant on November 13, 2012 in person. The landlord testifies that the tenant did not pay the rent of dispute the Notice and moved from the rental unit on November 23, 2012.

The landlord seeks to recover a loss of rent for November, 2012 of \$500.00. The landlord's agent testifies that the tenant also owes utilities of \$176.78; of this \$49.98 is owed for the District utilities and \$130.05 is owed for BC Hydro utilities. The landlord's agent testifies that as the tenants rent for November was returned due to insufficient funds the landlord also seeks to recover an NSF fee of \$30.00.

The landlord seeks an Order to keep the security deposit of \$250.00 in partial satisfaction of the landlord's monetary claim. The landlord also seeks to recover the \$50.00 filing fee from the tenant.

The landlord has provided a copy of the tenants rent ledger showing the unpaid rent and utilities, a copy of the proof of service document for the 10 Day Notice and the Canada Post tracking information showing service of the hearing package to the tenant.

Analysis

The tenant 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 tenant, I have considered the landlords documentary evidence and affirmed testimony before me.

S. 26 of the *Residential Tenancy Act (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's agent has testified that rent is due on the 1st day of each month and has corroborated that the tenant has failed to pay rent for November, 2012 with documentary evidence in the form of the rent ledger. Therefore, I find the landlord is entitled to recover a loss of rent for November, 2012 to the amount of **\$500.00**. I further find the tenant has failed to pay utilities as shown on the rent ledger and the landlord is entitled to recover the sum of **\$176.78** from the tenant.

With regard to the landlords claim to recover an NSF fee; the landlord must notify a tenant that these fees will be applied if the rent is late by making mention of it in the tenancy agreement. The *Act* also limits the amount a landlord may claim for fees of this nature to \$25.00. The landlord has not provided either a copy of the tenancy agreement to show that there is mention of these fees in the agreement and has not provided any proof as to the actual amount charged by the landlord's bank for NSF fees. Therefore I must dismiss this portion of the landlords claim.

The landlord is entitled to keep the tenants security deposit of **\$250.00** pursuant to s. 38(4)(b) of the *Act* and this amount will be offset against the unpaid rent.

The landlords claim is for a total amount of \$1,006.78. However, the landlord has made an error in the calculations for this claim as the landlord has added the amount of the security deposit to the amount claimed. A security deposit is an amount held in trust by the landlord for the tenant. This amount is then offset from any monetary claim if the landlord is successful; however it cannot be added to a monetary claim. I have recalculated the landlord's monetary claim and based my calculations below on this.

As the landlord has been largely successful with their revised claim I find the landlord is entitled to recover the **\$50.00** filing fee from the tenant pursuant to section 72(1) of the *Act*.

The landlord will receive a Monetary Order pursuant to s. 67 of the *Act* for the following amount:

Unpaid rent for November, 2012	\$500.00
Utilities	\$176.78
Less security deposit	(-\$250.00)
Filing fee	\$50.00
Total amount due to the landlord	\$476.78

Conclusion

I HEREBY FIND largely in favor of the landlord's monetary claim. A copy of the landlord's decision will be accompanied by a Monetary Order for **\$476.78**. The order must be served on the tenant 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: March 12, 2013

Residential Tenancy Branch

