



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding EXCLUSIVE MANAGEMENT
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNR, OPR, OPB, MNR, MNSD, MNDC, FF

Introduction

This hearing dealt with cross applications. The tenants applied to cancel a Notice to End Tenancy for Unpaid Rent. The landlord applied for an Order of Possession for unpaid rent and breach of an agreement; a Monetary Order for unpaid rent, loss of rent and NSF and late fees; as well as, authorization to retain the security deposit. Both parties appeared or were represented at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

Preliminary and Procedural Matters

The applications were amended to identify the landlord as named in the tenancy agreement, the Notices to End Tenancy, and the landlord's Application for Dispute Resolution, with the consent of both parties.

During the hearing the tenants stated that they were prepared to vacate the rental unit by March 31, 2013. The landlord was agreeable to an Order of Possession effective that date. As such, I found it unnecessary to determine whether the two 10 Day Notices to End Tenancy for Unpaid Rent should be upheld or cancelled as I shall issue an Order of Possession for March 31, 2013 based upon the mutual agreement reached between the parties. The remainder of this decision pertains to the landlord's monetary claims against the tenants.

Issue(s) to be Decided

1. Is the landlord entitled to a Monetary Order for unpaid rent, loss of rent, NSF and late fees in the amounts claimed?
2. Is the landlord authorized to retain the security deposit in partial satisfaction of the rent owed?

Background and Evidence

The tenancy commenced September 1, 2012 and the tenants paid a security deposit of \$550.00. The tenants are required to pay rent of \$1,100.00 on the 1st day of every month. The tenancy agreement provides for payment of a late fee and/or an administrative charge for each NSF cheque in the amount of \$25.00 each.

The tenants' rent cheque for January 2013 was returned for insufficient funds. The tenants subsequently paid the rent for January 2013; however, the landlord is seeking \$50.00 for paying the rent late and an NSF charge. The tenants did not dispute the landlord's entitlement to collect this amount.

The tenants' rent cheque for February 2013 was also returned for insufficient funds. The landlord personally served a 10 Day Notice to End Tenancy for Unpaid Rent upon the female tenant on February 16, 2013. The landlord is seeking unpaid rent of \$1,100.00 plus \$50.00 for a late charge and NSF charge. The tenants were agreeable that they owe these amounts although they did make an attempt to give the landlord \$800.00 on February 20, 2013 and that payment was declined. The landlord acknowledged she turned away the partial payment with instructions that full payment was required by February 20, 2013.

It was undisputed that the tenants have not paid rent for March 2013 and the landlord personally served a 10 Day Notice to End Tenancy for Unpaid Rent upon the female tenant on March 2, 2013. The tenants continue to occupy the rental unit. The landlord is seeking \$1,100.00 for the month of March 2013. The tenants did not object to this portion of the claim.

The landlord applied for anticipated loss of rent for the month of April 2013. This portion of the landlord's claim was dismissed with liberty to reapply should the landlord suffer a loss of rent for the month of April 2013 despite the landlord's attempts to re-rent the unit. It was undisputed that the landlord first learned of the tenants' intention to vacate the rental unit at the end of March 2013 during this proceeding.

During the hearing the parties reached an agreement to conduct the move-out inspection together at 5:00 p.m. on March 31, 2013.

Analysis

Pursuant to section 63 of the Act I have the authority to assist parties reach a mutual agreement and record the agreement in the form of a decision or Order. Based upon

the mutual agreement reached during the hearing to end the tenancy March 31, 2013 and participate in a move-out inspection at 5:00 p.m. on that date, I provide the landlord with an Order of Possession with this decision that shall be effective at 5:00 p.m. on March 31, 2013.

Pursuant to the terms of the tenancy agreement, and considering the tenants have resided in the rental unit during the months of February 2013 and March 2013, I find the landlord entitled to recover unpaid rent for these amounts in the sum of \$2,200.00.

Upon review of the tenancy agreement, I am satisfied the landlord is entitled to recover \$25.00 for each late payment and \$25.00 for each NSF cheque and that these charges are compliant with the requirements of the Residential Tenancy Regulations. Based upon the undisputed evidence before me, I find the landlord entitled to \$100.00, as claimed, for late fees and NSF fees for the months of January and February 2013.

I award the filing fee of \$50.00 to the landlord and I authorize the landlord to retain the tenants' security deposit in partial satisfaction of the rent owed to the landlord.

In light of the above findings, I provide the landlord with a Monetary Order calculated as follows:

Unpaid rent: February 2013 and March 2013	\$ 2,200.00
Late fees and NSF fees: January 2013 and February 2013	100.00
Filing fee	50.00
Less: security deposit	<u>(550.00)</u>
Monetary Order for landlord	\$ 1,800.00

The Monetary Order must be served upon the tenants and may be enforced in Provincial Court (Small Claims) as an Order of the court.

Conclusion

The landlord is provided an Order of Possession effective at 5:00 p.m. on March 31, 2013 to serve and enforce as necessary. The landlord is authorized to retain the tenants' security deposit and has been provided a Monetary Order for the balance of \$1,800.00 to serve and enforce as necessary.

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 19, 2013

Residential Tenancy Branch

