



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Haro Holdings Inc.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNR, MNSD, FF

Introduction

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

At the outset of the hearing the landlord advised that the tenant is 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 tenant, was done in accordance with section 89 of the *Act*, sent via registered mail on April 3, 2013. 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 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?
- Is the landlord entitled to keep the security deposit?

Background and Evidence

The landlord testifies that this tenancy started originally on February 01, 2011 although the tenant could not move into the unit until later in that month and the rent was prorated accordingly. The tenant moved to this unit on February 01, 2013. Rent for this unit is \$960.00 per month and was due on the first day of each month. The tenant paid a security deposit of \$625.00 at the start of the tenancy in 2011 and this was reduced to \$482.50 to reflect the lower rent in the new unit. A credit was applied to the tenant's account for February, 2013.

The landlord testifies that when the tenant moved to the new unit the tenant claimed that he had paid the first and last month's rent at the start of the tenancy in 2011 and had paid a pet deposit. The landlord testifies that they do not take a last month's rent from tenants at the start of a tenancy and there is no record of the tenant having paid a pet deposit. The landlord has provided a copy of the tenant's original cheques paid at the start of the tenancy. One shows the sum of \$625.00 paid as a rent deposit and one for \$700.00 for half of February's rent.

The landlord testifies that the tenant failed to pay rent for February, 2013 of \$817.50. A 10 Day Notice to End Tenancy was served upon the tenant on February 18, 2013. The landlord testifies that the sum of \$822.00 was put on the notice as rent owed for February in error and the amount should have read \$817.50. The notice was posted to the tenant's door. This Notice informed the tenant that the tenant has five days to either pay the rent or dispute the Notice or the tenancy will end on March 03, 2013. The landlord testifies that the tenant did not pay the rent or dispute the Notice. The landlord

testifies that the tenant did not inform the landlord that he had moved from the unit until the landlord received an e-mail from the tenant yesterday informing the landlord that the tenant had vacated the unit on March 02, 2013. The landlord testifies that due to this they were unable to re-rent the unit for March and seek to recover unpaid rent for March of \$960.00.

The landlord seeks an Order to keep the security deposit which is now \$482.50 and seeks to recover the filing fee of \$50.00 from 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 landlord's documentary evidence and affirmed testimony before me. 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.

The landlord has testified that rent is due on the 1st day of each month and the tenant failed to pay rent for February of \$817.50. The tenant moved from the rental unit on March 02, 2013 and the unit could not be re-rented for March as the landlords were not made aware that the tenant had moved out until April. Therefore in accordance with the Residential Tenancy Policy Guidelines #3 which states, in part, that in a month to month tenancy, if the tenancy is ended by the landlord for non-payment of rent, the landlord may recover any loss of rent suffered for the next month as a notice given by the tenant during the month would not end the tenancy until the end of the subsequent month. Therefore, I find the landlord has established a loss of rent for February, 2013 of \$817.50 and for March, 2013 of \$960.00. The landlord is therefore entitled to a monetary award to the sum of \$1,777.50.

The landlord is therefore entitled to keep the tenant's security deposit of **\$482.50** pursuant to s. 38(4)(b) of the *Act* and this sum will be offset against the unpaid rent.

As the landlord has been successful with this 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 and 72(1) of the *Act* for the following amount:

Unpaid rent for February and March, 2013	\$1,777.50
Less security deposit	(-\$482.50)
Filing fee	\$50.00
Total amount due to the landlord	\$1,345.00

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 **\$1,345.00**. 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: April 25, 2013

Residential Tenancy Branch