



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, OPB, MND, 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 and utilities and because the tenants have breached an agreement with the landlord; For a Monetary Order for damage to the unit, site or property; for a Monetary Order for unpaid rent or utilities; or an Order permitting the landlord to keep all or part of the tenants security deposit; 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 applications for an Order of Possession. The landlord also withdraws their application for damage to the unit, site or property at this time.

Service of the hearing documents, by the landlord to the tenants, was done in accordance with section 89 of the *Act*, and was served upon the tenants in person. The landlord witness who performed this service attended the hearing to give sworn testimony that service took place on March 26, 2012 to the tenants in person.

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 tenants, 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 to recover unpaid rent?
- Is the landlord is entitled to keep all or part of the security deposit?

Background and Evidence

The landlord testifies that this month to month tenancy started on October 01, 2012. Rent was 1,100.00 per month due on the 1st of each month. The tenants paid a security deposit of \$550.00 at the start of the tenancy.

The landlord testifies that the tenants failed to pay rent for February, 2013. The rent cheque that had been provided by the tenants was cancelled by the tenants while the landlords were on vacation. When the landlords returned from vacation they found the tenants had moved from the rental unit. The landlord testifies that his neighbour informed the landlord that the tenants moved out around February 12, 2013. The landlord testifies that no notice to end the tenancy was given by the tenants.

The landlord testifies that they had reduced the rent to the tenants by \$35.00 a month for October, November, December and January as the tenants had complained about the pump on the pond at the property and the electric usage concerning the pump. The landlord testifies that the tenants were informed to turn off the pump which was done in February. The landlord testifies that therefore this rent reduction for the previous months was applied to Februarys rent which left a balance outstanding of \$960.00 which the landlord seeks a monetary Order to recover.

The landlord requests an Order to keep the tenants security deposit of \$550.00 in partial payment of the rent arrears and seeks to recover the \$50.00 filing fee paid for this application.

Analysis

The tenants 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 tenants, I have carefully considered the landlords 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.*

It is my decision that the tenants failed to pay rent for February, 2013 of the reduced amount of \$960.00 and failed to provide the landlord with written notice to vacate the rental unit as required under s. 45 of the Act. Consequently I uphold the landlords claim to recover \$960.00 in unpaid rent.

I order the landlords pursuant to s. 38(4)(b) of the Act to keep the tenants' security deposit of **\$550.00** in partial payment of the rent arrears.

As the landlords have been successful with their claim I find the landlords are entitled to recover the **\$50.00** filing fee from the tenants pursuant to section 72(1) of the Act.

The landlords will receive a Monetary order for the balance owing as follows:

Outstanding rent for February, 2013	\$960.00
Less security deposit	(-\$550.00)
Plus filing fee	\$50.00
Total amount due to the landlord	\$460.00

Conclusion

I HEREBY FIND in favor of the landlords' monetary claim. A copy of the landlords' decision will be accompanied by a Monetary Order for **\$460.00**. The order must be served on the tenants 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 23, 2013

Residential Tenancy Branch