



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, FF

Introduction

This hearing was convened by way of conference call in response to the landlord's application for, an Order of Possession for unpaid rent or utilities; for a Monetary Order for unpaid rent or utilities; 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*; served by registered mail on May 24, 2013. Canada Post tracking numbers were provided by the landlord in 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 to recover unpaid rent?

Background and Evidence

The landlord testifies that this tenancy started approximately three or four years ago when the property was owned by the landlord's ex-wife. The landlord testifies that he took over the property in May 2013. Rent for this unit is \$850.00 and is due on the first day of each month.

The landlord testifies that the tenant was given permission to pay rent for May, 2013 on May 07, 2013. However the tenant failed to make that payment as agreed and the landlord served the tenant with a 10 Day Notice to End Tenancy on May 11, 2013. This Notice informed the tenant that rent of \$850.00 is outstanding and it was due on May 01, 2013. The Notice also informs the tenant that the tenant has five days to pay the rent or file an application to dispute the Notice or the tenancy will end on May 21, 2013.

The landlord testifies that the tenant did say she was going to vacate the unit on May 24, 2013 but the landlord had no confirmation of this. The landlord was reluctant to advertise the unit at that time in case the tenant did not move out in accordance with the 10 Day Notice. The landlord testifies that he believes the tenant vacated the unit at the end of May, 2013.

The landlord testifies that to date no rent has been paid for May, 2013. The landlord testifies that due to the damage left in the unit, namely a door torn off its hinges, a firebox overheated requiring replacement, the counter top suffered damage and the tenant left some old belongings and garbage in the unit the landlord has had to spend time in the unit preparing the unit for rent. The landlord testifies that he is hoping the unit will be re-rented for July 01, 2013. The landlord therefore seeks to recover a loss of rent for June, 2013 of \$850.00. The landlord seeks a Monetary Order to recover the unpaid rent and loss of rent for June and the \$50.00 filing fee.

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 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 May, 2013. The tenant moved from the rental unit sometime towards the end of May, 2013. 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. This Policy Guideline also states that even where a tenancy has been ended by proper notice, if the premises are un-rentable due to damage caused by the tenant, the landlord is entitled to claim damages for loss of rent. The landlord is required to mitigate the loss by completing the repairs in a timely manner. I find from the undisputed testimony that the tenant did not correct damage caused during the tenancy and the landlord has had to remedy this during the month of June. It is therefore my decision that the landlord is entitled to recover a loss of rent for June, 2013 of \$850.00. The landlord has therefore established a claim for unpaid rent of **\$1,700.00**.

As the landlord has been successful in this matter, the landlord is entitled to recover from the tenant the **\$50.00** filing fee for the cost of this application.

Conclusion

I find that the landlord is entitled to a Monetary Order pursuant to Section 67 of the *Residential Tenancy Act* in the amount of **\$1,750.00**. This order must be served on the Respondent and may be filed in the Provincial Court (Small Claims) and enforced 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: June 19, 2013

Residential Tenancy Branch

