



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNSD, FF

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- an Order of Possession for unpaid rent pursuant to section 55;
- a monetary order for unpaid rent pursuant to section 67;
- authorization to retain all or a portion of the security deposit for this tenancy in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover his filing fee for this application from the tenants pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions and to cross-examine one another. The landlord testified that he handed the female tenant a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) on June 7, 2013. He entered into written evidence a Proof of Service document signed by the female tenant in which she confirmed that she was handed the 10 Day Notice on June 7, 2013. I am satisfied that the tenants were served with the landlord's 10 Day Notice in accordance with section 88 of the *Act*.

The landlord testified that on June 13, 2013, he handed the female tenant a copy of his dispute resolution hearing package. He said that the female tenant told him that she would also hand this package to her husband, the other tenant. The landlord's witness, his daughter, testified that she observed her father give the hearing package to the female tenant. She said that she took a photograph of the service delivery of this package and undertook an audio recording of the delivery of this document. As noted at the hearing, I am satisfied that the landlord served his dispute resolution hearing package to the female tenant in accordance with section 89 of the *Act*.

At the hearing, the landlord withdrew his application to end this tenancy on the basis of the 10 Day Notice because the tenants vacated the rental unit sometime before June 19, 2013. The landlord's application to end this tenancy and obtain an Order of Possession are withdrawn.

A party submitting an application for dispute resolution to seek a monetary award must comply with section 89(1) of the *Act*, which establishes Special Rules for serving the dispute resolution hearing package, including the notice of hearing. As the landlord did not serve his dispute resolution hearing package to the male tenant in one of the prescribed methods of service delivery outlined in section 89(1) of the *Act*, I find that the male tenant has not been served with notice of the landlord's application for a monetary award. As such, I can only consider the landlord's application for a monetary award against the female tenant who was served in accordance with section 89(1) of the *Act*.

The tenants did not attend this hearing, although I waited until 3:13 p.m. in order to enable the tenant to connect with this teleconference hearing scheduled for 3:00 p.m. The landlord attended the hearing and was given a full opportunity to be heard, to present evidence and to make submissions.

Issues(s) to be Decided

Is the landlord entitled to a monetary award for unpaid rent? Is the landlord entitled to retain all or a portion of the security deposit for this tenancy in partial satisfaction of the monetary award requested? Is the landlord entitled to recover the filing fee for this application from the tenant(s)?

Background and Evidence

This fixed term tenancy commencing on September 1, 2012 was scheduled to end on August 30, 2013. Monthly rent including utilities was set at \$1,200.00, payable in advance on the first of each month. The landlord continues to hold the tenants' \$600.00 security deposit paid on August 15, 2012.

The landlord applied for a monetary award of \$1,807.00, to cover unpaid rent of \$600.00 for April 2013, his \$7.00 N.S.F. cheque fee, and unpaid rent of \$1,200.00 for June 2013. The landlord testified that the tenants' rent cheque for April 2013 was returned to the landlord by his bank as there were insufficient funds in the tenants' account to cover this rent cheque. The landlord testified that he received \$600.00 from the tenants on April 26, 2013. He testified that he did not receive the remaining \$600.00 in rent for April 2013 and that the tenants did not pay their rent for June 2013. He testified that the tenants vacated their rental unit without returning their keys. He said that he was in the process of locating new tenants to take possession of the rental unit by July 1, 2013.

Analysis

Based on the landlord's undisputed evidence, I find that the landlord is entitled to a monetary award of \$600.00 for unpaid rent owing from April 2013 and the \$7.00 N.S.F.

cheque fee from April 2013 from the female tenant. As I am satisfied that the landlord was unlikely to have been able to re-rent the premises for any portion of June 2013, I also allow the landlord's application for a monetary award of \$1,200.00 from the female tenant for unpaid rent owing from June 2013.

I allow the landlord to retain the security deposit for this tenancy plus applicable interest to partially offset the amount of the above-noted monetary award. No interest is applicable over this period. As the landlord has been successful in this application, I allow the landlord to recover his \$50.00 filing fee from the female tenant.

Conclusion

I issue a monetary Order in the landlord's favour against the female tenant under the following terms, which allows the landlord to recover unpaid rent, the NSF cheque fee added to the rent owing, and the filing fee for this application, and to recover the security deposit for this tenancy:

Item	Amount
Unpaid Portion of April 2013 Rent	\$600.00
April 2013 N.S.F. Cheque Fee added to Outstanding Rent	7.00
Unpaid June 2013 Rent	1,200.00
Less Security Deposit	-600.00
Recovery of Filing Fee for this Application	50.00
Total Monetary Order	\$1,257.00

The landlord is provided with these Orders in the above terms and the female tenant must be served with this Order as soon as possible. Should the female tenant fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders of that Court. The landlord's application to end this tenancy and obtain an Order of Possession is withdrawn.

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 28, 2013

Residential Tenancy Branch

