



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNSD, MNDC, 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; for an Order permitting the landlord to keep all or part of the tenants security deposit; for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement 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 applications 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*, and were served in person to the tenant on August 10, 2013.

The landlord's agent 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 and utilities?
- Is the landlord entitled to keep the security deposit?
- Is the landlord entitled to a Monetary Order for money owed or compensation for damage or loss?

Background and Evidence

The landlord's agent testifies that this tenancy started on April 07, 2011 for a fixed term of two years. Rent for this unit was \$2,000.00 per month. Rent was due on the first day of each month. The tenant paid a security deposit of \$1,000.00 on April 02, 2011.

The landlord's agent testifies that a 10 Day Notice to End Tenancy was served upon the tenant on August 02, 2013 in person. This Notice informed the tenant that rent is owed of \$3,550.00. The Notice also informs the tenant that the tenant has five days to either pay the rent or dispute the Notice or the tenancy will end on August 12, 2013. The tenant moved from the rental unit on August 31, 2013. The landlord's agent testifies that the outstanding rent was for July of \$1,550.00 and for August of \$2,000.00. The landlord's agent testifies that the unit was re-rented to new tenants for September 15, 2013 and the landlord therefore seeks to recover \$1,000.00 in a loss of rent for September, 2013.

The landlord's agent requests an Order for the landlord to keep the security deposit of \$1,000.00 to offset against the unpaid rent. The landlord also seeks to recover the \$100.00 filing fee paid for this application.

Analysis

The tenant did not appear at the hearing to dispute the landlord's 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 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.

I am satisfied with the evidence before me that the tenant failed to pay rent for July and August, 2013. The landlord is therefore entitled to a Monetary Order to recover this outstanding balance of \$3,550.00.

With regard to the landlords claim for a loss of rental income for September, 2013 of \$1,000.00; I refer the Parties to the Residential Tenancy Policy Guidelines #3 which deals with the issues concerning unpaid rent or loss of income. This states, in part, 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 fixed term tenancy ended in April 2013, the tenancy reverted to a month to month tenancy at that time. The landlords did not exercise their right to increase the rent as stated in the addendum to the tenancy agreement. As the tenants moved from the rental unit as per the 10 Day Notice to End Tenancy and the landlord was unable to re-rent the unit for September 01, 2013, The landlord had originally claim \$2,000.00 for Septembers rent but as the unit was re-rented the landlord reduces this claim. I find the landlord has therefore established their claim for a loss of rental income for September to the sum of **\$1,000.00.**

The landlord is therefore entitled to keep the tenants security deposit of **\$1,000.00** pursuant to s. 38(4)(b) of the *Act* and this sum will be offset against the unpaid rent.

As the landlords have been largely successful with their claim I find the landlords are entitled to recover the **\$100.00** filing fee from the tenant pursuant to section 72(1) of the *Act*. The landlord will receive a Monetary Order pursuant to s. 67 of the *Act* for the following amount:

Unpaid rent for July and August	\$3,550.00
Loss of rent for September	\$1,000.00
Subtotal	\$4,550.00
Less security deposit	(-\$1,000.00)
Filing fee	\$100.00
Total amount due to the landlord	\$3,650.00

The landlord requested that I consider their claim for a Monetary Order for damage and cleaning to the rental unit. In the absence of a formal and proper application for that issue, I declined to hear or determine that issue, as to do so, in my view, would not be in keeping with the principles of natural justice as to the requisite process and notice regarding claims in this process.

Conclusion

I HEREBY FIND largely in favor of the landlords' monetary claim. A copy of the landlords' decision will be accompanied by a Monetary Order for **\$865.00**. 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: September 18, 2013

Residential Tenancy Branch

