



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 was convened as a result of the landlord's application for dispute resolution under the *Residential Tenancy Act* (the "Act") for an order of possession for unpaid rent or utilities, for a monetary order for unpaid rent or utilities, for authorization to keep all or part of the security deposit, and to recover the cost of the filing fee.

The landlord and the spouse of the landlord attended the teleconference hearing. During the hearing the landlord was given the opportunity to provide his evidence orally. A summary of the testimony is provided below and includes only that which is relevant to the hearing.

As the tenants did not attend the hearing, service of the Notice of a Dispute Resolution Hearing (the "Notice of Hearing") was considered. The landlord testified that the Notice of Hearing and evidence was served on tenant, CC, in person, which was witnessed by third party, HT, on September 23, 2013 between noon and 1:00 p.m. I accept the landlord's undisputed testimony that tenant CC was personally served by the landlord with the Notice of Hearing and evidence on September 23, 2013.

Preliminary and Procedural Matters

As the landlord failed to serve tenant JT, and in accordance with section 89(1) of the *Act*, I find that should the landlord be successful with his application for a monetary order, that any resulting monetary order will name only tenant CC, and not tenant JT, as tenant JT was not served with the Notice of the Hearing.

At the outset of the hearing, the landlord testified that the tenants vacated the rental unit on October 16, 2013, since filing his application. As a result, the landlord requested to withdraw his request for an order of possession as the tenants had already given up possession of the rental unit by vacating the rental unit on October 16, 2013.

The landlord testified that in addition to the rent owed for July, August, and September of 2013, the tenants subsequently failed to pay rent for the month of October 2013. As a result, the landlord requested to amend his application to include rent owed for the month of October 2013. I find that the landlord's request to amend his application does not prejudice the respondent tenants as it is reasonable that the tenants would be aware that rent is due pursuant to the tenancy agreement. Therefore, I grant the landlord's request to add unpaid rent for the month of October 2013 in the amount of \$750.00 to his monetary claim.

Issues to be Decided

- Is the landlord entitled to a monetary order under the *Act*, and if so, in what amount?
- What should happen to the tenants' security deposit under the *Act*?

Background and Evidence

The landlord testified that a verbal month to month tenancy agreement between the parties began on September 1, 2003 and ended on October 16, 2013 when the tenants vacated the rental unit. Monthly rent in the amount \$750.00 was due on the first day of each month during the tenancy. The tenants paid a security deposit of \$375.00 at the start of the tenancy which the landlord continues to hold. The interest on the tenants' security deposit will be addressed later in this Decision.

The landlord applied for dispute resolution on September 20, 2013, after he issued a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "10 Day Notice") on the tenants dated September 14, 2013. The landlord stated that he personally served tenant JT on September 14, 2013 at the rent unit, which was witnessed by his wife, JG. The 10 Day Notice submitted in evidence has an effective vacancy date of September 24, 2013.

In addition to the recovery of his filing fee, the landlord is seeking a monetary claim of \$3,000.00 comprised of the following:

Item Description	Amount
1. Unpaid rent for July 2013	\$750.00
2. Unpaid rent for August 2013	\$750.00
3. Unpaid rent for September 2013	\$750.00
4. Unpaid rent for October 2013	\$750.00
TOTAL MONETARY CLAIM	\$3,000.00

The landlord provided undisputed testimony confirming the amounts described in the table above. The landlord testified that the tenants did not dispute the 10 Day Notice after being served the 10 Day Notice on September 14, 2013. The amount listed as owed by the tenants on the 10 Day Notice is \$2,250.00, which the landlord stated did not include unpaid rent for October 2013 in the amount of \$750.00. The landlord stated that the tenants did not dispute the 10 Day Notice and did not pay any of the amount owing indicated on the 10 Day Notice, and have since failed to pay October 2013 rent of \$750.00.

The landlord stated that when the tenants vacated the rental unit on October 16, 2013, the tenants abandoned some of their personal items in the rental unit and had ripped out the carpets of the rental unit. The landlord testified that the tenants left the rental unit in such a condition that the landlord could not re-rent the rental unit for the remainder of the month of October 2013.

The landlord submitted a copy of the 10 Day Notice in evidence to support his application.

Analysis

Based on the documentary evidence and the undisputed testimony of the landlord, and on the balance of probabilities, I find the following.

Monetary claim of landlord – The landlord testified that the tenants failed to pay \$750.00 in rent for the months of July, August, September and October of 2013. Pursuant to section 26 of the *Act*, tenants must pay rent when it is due in accordance with the tenancy agreement. Based on the above, **I find** the tenants breached section 26 of the *Act* by failing to pay \$750.00 in rent for the months of July, August, September and October of 2013.

I accept the landlord's undisputed testimony that the tenants left the rental unit in such a condition that the landlord could not re-rent the unit for the remainder of the month of October 2013. **I find** that by the tenants vacating on October 16, 2013, and not by the effective vacancy date listed on the 10 Day Notice, September 24, 2013, that the tenants owe the full month of October 2013 rent as rent for October 2013 was due on October 1, 2013, and the tenants were still occupying the rental unit until October 16, 2013. **I find** the tenants put the landlord in a position where the landlord could not reasonably find new renters for the rental unit for October 2013 by vacating on October 16, 2013.

Therefore, **I find** the landlord has met the burden of proof and **I grant** the landlord **\$3,000.00** comprised of unpaid rent in the amount of \$750.00 per month for the months of July, August, September and October of 2013.

As the landlord's application had merit, **I grant** the landlord the recovery of the **\$50.00** filing fee.

Monetary Order – I find that the landlord has established a total monetary claim of **\$3,050.00** comprised of \$3,000.00 in unpaid rent, plus the \$50.00 filing fee. I find this claim meets the criteria under section 72(2)(b) of the *Act* to be offset against the tenants' security deposit, which the landlord continues to hold, in the amount of \$375.00, which has accrued \$13.29 in interest since the start of the tenancy, resulting in a total security deposit of \$388.29. **I authorize** the landlord to retain the tenants' full security deposit \$388.29, which includes interest, in partial satisfaction of the landlord's monetary claim, and **I grant** the landlord a monetary order pursuant to section 67 of the *Act* for the balance owing by tenant CC, to the landlord in the amount of **\$2,661.71**. This order must be served on tenant CC, and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

Conclusion

I find that the landlord has established a total monetary claim of \$3,050.00 as indicated above. I authorize the landlord to retain the tenants' full security deposit of \$388.29, which includes interest, in partial satisfaction of the landlord's claim, and I grant the landlord a monetary order under section 67 for the balance due of \$2,661.71. This order must be served on tenant, CC, and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

This decision is final and binding on the parties, unless otherwise provided under the *Act*, and 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: November 12, 2013

Residential Tenancy Branch

