



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, OPC, MNR, MNSD, FF

Introduction

This is an application filed by the Landlord for an order of possession for unpaid rent and/or because the Landlord has cause and a monetary claim for unpaid rent or utilities, to keep all or part of the security deposit and recovery of the filing fee.

The Landlord attended the hearing by conference call and gave undisputed testimony. The Tenant did not attend or submit any documentary evidence. The Landlord states that the Tenant was served with the notice of hearing package and the submitted documentary evidence in person on October 26, 2013 with the witness, D.F. The witness, D.F. has confirmed this in his direct testimony.

At the beginning of the hearing, the Landlord stated that the Tenants had vacated the rental unit on either November 2nd or 3rd and no longer required an order of possession. As such, no further action is required for this portion of the claim.

Issue(s) to be Decided

Is the Landlord entitled to a monetary order?

Is the Landlord entitled to retain the security deposit?

Background and Evidence

This Tenancy began on October 10, 2012 on a fixed term tenancy ending on April 30, 2013 and then thereafter on a month to month basis as shown by the submitted copy of the signed tenancy agreement. The monthly rent \$1,100.00 payable on the 1st of each month and a security deposit of \$550.00 was paid on October 10, 2012.

The Landlord states that a 10 day notice to end tenancy issued for unpaid rent dated September 15, 2013 was served upon the Tenant which states that rent arrears totalling, \$6,000.00 for the period between November 2, 2012 and September 2013 were not paid. The Landlord states that no rent has been paid since this notice was served.

The Landlord seeks a monetary order for unpaid rent of \$8,730.00. This consists of \$8,450.00 of unpaid rent, \$25.00 for an NSF charge and \$905.00 in late rent fees. The Landlord states that late rent fees are \$5.00 a day.

Analysis

I accept the undisputed testimony of the Landlord and find that a claim has been established. However, section 7 of the Residential Tenancy Regulations state,

Non-refundable fees charged by landlord

7 (1) A landlord may charge any of the following non-refundable fees:

(d) subject to subsection (2), an administration fee of **not more than \$25** for the return of a tenant's cheque by a financial institution or **for late payment of rent**;

The Landlord seeks to recover costs of \$5.00 per day and in some cases for as much as \$155.00 in late rent fee per month, I find that the late rent fee provided by the Landlord is unconscionable and dismiss this portion of the Landlord's claim.

The Landlord has established a claim for unpaid rent of \$8,450.00 and the \$25.00 NSF charge, totalling, \$8,475.00. The Landlord is also entitled to recovery of the \$100.00 filing fee. I order that the Landlord retain the \$550.00 security deposit in partial satisfaction of the claim and I grant a monetary order under section 67 for the balance due of \$8,025.00. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

Conclusion

The Landlord is granted a monetary order for \$8,025.00.
The Landlord may retain the security deposit.

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: December 03, 2013

Residential Tenancy Branch

