



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Sutton Group Madallion Realty
and [tenant name suppressed to protect privacy]

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 tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The tenant did not attend this hearing, although I waited until 9:45 a.m. in order to enable the tenant to connect with this teleconference hearing scheduled for 9:30 a.m. The landlord attended the hearing and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The landlord testified that she handed the tenant a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) on January 6, 2014. I find that the 10 Day Notice was served to the tenant as declared by the landlord. The landlord testified that she sent a copy of her dispute resolution hearing package to the tenant by registered mail on April 30, 2014. She testified that she sent this to the tenant by registered mail to the forwarding address provided to her by the tenant throughout this tenancy. The landlord provided the Canada Post Tracking Number to confirm this mailing and to confirm that Canada Post returned this package to the landlord when the tenant refused to accept it. In accordance with sections 89 and 90 of the *Act*, I find that the tenant was deemed served with this hearing package on May 5, 2014, the fifth day after its registered mailing.

At the hearing, the landlord withdrew her application for an Order of Possession because she said that the tenant moved out of this rental unit by January 28, 2014. The landlord's application for an Order of Possession is hereby withdrawn.

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 tenant's security deposit in partial satisfaction of the monetary award requested? Is the landlord entitled to recover the filing fee for this application from the tenant?

Background and Evidence

This one-year fixed term tenancy began on June 1, 2013 and was scheduled to end on May 31, 2014. According to the terms of the Residential Tenancy Agreement entered into written evidence by the landlord, monthly rent was set at \$1,800.00, payable in advance on the first of each month. The landlord continues to hold the tenant's \$900.00 security deposit paid on May 30, 2013.

The landlord gave sworn testimony and written evidence that the tenant has not paid any portion of the January 2014 rent for this tenancy. The landlord applied for a monetary award of \$1,800.00, the amount of rent owing for January 2014.

Analysis

Section 7(1) of the *Act* establishes that a tenant who does not comply with the *Act*, the regulations or the tenancy agreement must compensate the landlord for damage or loss that results from that failure to comply. I find that the tenant was in breach of her fixed term tenancy by ending her tenancy before the May 31, 2014 date specified in that agreement and failed to pay any rent for January 2014. As such, the landlord is entitled to compensation of \$1,800.00 in unpaid rent owing from the tenant's failure to comply with the terms of her tenancy agreement and the *Act*.

In order to implement this monetary award, I allow the landlord to retain the tenant's security deposit plus applicable interest. No interest is payable over this period. As the landlord has been successful in this application, I allow the landlord to recover the filing fee.

Conclusion

The landlord's application for an Order of Possession is withdrawn.

I issue a monetary Order in the landlord's favour under the following terms, which allows the landlord to recover unpaid rent and the filing fee and to retain the tenant's security deposit:

Item	Amount
Unpaid January 2014 Rent	\$1,800.00
Less Security Deposit	-900.00
Recovery of Filing Fee for this Application	50.00
Total Monetary Order	\$950.00

The landlord is provided with these Orders in the above terms and the tenant must be served with this Order as soon as possible. Should the 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.

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 18, 2014

Residential Tenancy Branch

