



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC, MNR, MNDC, FF

Introduction

This hearing dealt with an application by the landlord for an order of possession and a monetary order. The tenants did not participate in the conference call hearing. The landlord testified that he served the tenants with the application for dispute resolution and notice of hearing via registered mail sent on October 10. I accepted the landlord's testimony, determined that the tenants had proper notice of the claim against them and proceeded with the hearing in the tenants' absence.

At the hearing, the landlord testified that the tenants had vacated the rental unit the week prior to the hearing. As an order of possession is no longer required, I consider that claim to have been withdrawn.

Issue to be Decided

Is the landlord entitled to a monetary order as claimed?

Background and Evidence

The landlord's undisputed evidence is as follows. The tenants were required to pay \$950.00 each month in rent. The tenants paid rent through the end of July and thereafter made no more rental payments. The landlord did not submit a copy of the tenancy agreement, but testified that it contained a provision in which the tenants agreed to pay a penalty of one month's rent if they breached any terms of the tenancy agreement. On his application for dispute resolution, the landlord requested \$950.00 in rent for September as well as \$950.00 as a charge for the tenants having breached the tenancy agreement.

Analysis

I accept the landlord's undisputed testimony and I find that the tenants were obligated to pay the landlord \$950.00 per month in rent. I accept that the tenants failed to pay rent in the months of August – November inclusive. The landlord chose to limit his monetary claim for rental arrears to the month of September so I have not have not considered other months in which the tenants failed to pay rent. I find that the landlord is entitled to recover the rental arrears for the month of September 2014 and I award the landlord \$950.00.

Turning to the landlord's claim for a penalty for breaching terms of the tenancy agreement, the landlord is not permitted under the Act to charge a fee for breaching the terms of the tenancy agreement. I find that to impose such a term would be unconscionable as the tenants could be subject to significant fees for even the most minor breaches. I find the term to be unenforceable and therefore dismiss the claim for this fee.

As the landlord has been successful in his application, I find he should recover the \$50.00 filing fee paid to bring his claim and I award him this sum.

Conclusion

The landlord has been awarded a total of \$1,000.00 which represents \$950.00 for September rent and \$50.00 for his filing fee. I grant the landlord a monetary order under section 67 for this sum. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court should the tenants fail to comply with the Order.

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: November 21, 2014

Residential Tenancy Branch

