



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CAMARGUE INVESTMENT
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 its filing fee for this application from the tenant pursuant to section 72.

The tenant did not attend this hearing, although I waited until 1342 in order to enable the tenant to connect with this teleconference hearing scheduled for 1330. The landlord's agent attended the hearing and was given a full opportunity to be heard, to present sworn testimony, and to make submissions.

At the beginning of the hearing the landlord's agent informed me that the landlord had possession of the rental unit. The landlord withdrew the application for an order of possession as the issue was moot. Additionally, I allowed the landlord's request to amend the application to include the landlord's full legal name as there was no prejudice to the tenant in doing so.

Service

Documentary evidence filed by the landlord indicates that the tenant was served by posting the 10 Day Notice to the tenant's door at 1205 on 2 October 2014. This posting was witnessed by the landlord's resident property manager LE. I accept that the tenant was properly served with the 10 Day Notice on 5 October 2014, three days after its posting.

The landlord filed its original application on 15 October 2014 and its amended application on 22 October 2014. The landlord's agent testified that she served the tenant with the Dispute Resolution package on 23 October 2014 by handing the amended package to the tenant personally. I am satisfied that the tenant was properly served with notice of this application pursuant to sections 89 and 90 of the Act.

Issue(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

While I have turned my mind to all the documentary evidence, including, miscellaneous letters and documents, and the testimony of the landlord's, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the landlord's claim and my findings around each are set out below.

The landlord submitted the following evidentiary material:

- a copy of a residential tenancy agreement which was signed by the landlord and the tenant on 20 November 2013, indicating a monthly rent of \$730.00 due on the 1st day of the month for a tenancy commencing on 1 December 2013 and a security deposit of \$365.00;
- a copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) posted on the tenant's door at 1205 on 2 October 2014, with a stated effective vacancy date of 12 October 2014, for \$929.00 in unpaid rent; and
- a witness statement from LE that he witnessed the landlord's agent, JE, post the 10 Day Notice on the tenant's door.

The landlord's agent provided sworn testimony that:

- she and her husband (LE) were the landlord's resident property managers;
- the tenant vacated the rental unit on 29 October 2014;
- at the time the tenant vacated the rental unit the tenant owed \$929.00 in outstanding rent: \$199.00 from September 2014 and \$730.00 from October 2014; and
- the landlord continues to hold the tenant's security deposit in the amount of \$365.00.

Analysis

The 10 Day Notice states that the tenant had five days from the date of service to pay the rent in full or apply for Dispute Resolution or the tenancy would end. The tenant did not apply to dispute the 10 Day Notice within five days from the date of service.

I accept the landlord's agent's uncontested, sworn testimony that the tenant owes rental arrears of \$929.00: October rent of \$730.00 and September rent arrears of \$199.00.

The landlord applied to keep the tenant's security deposit pursuant to subsection 38(4) of the Act. I allow the landlord to retain the security deposit in partial satisfaction of the monetary award. No interest is payable over this period.

As the landlord was successful in this application, I find that the landlord is entitled to recover the \$50.00 filing fee paid for this application.

Conclusion

I issue a monetary order in the landlord's favour in the amount of \$614.00 under the following terms:

Item	Amount
Unpaid September Rent	\$199.00
Unpaid October Rent	730.00
Offset Security Deposit Amount	-365.00
Recovery of Filing Fee for this Application	50.00
Total Monetary Order	\$614.00

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.

The landlord's application for an end to this tenancy and the issuance of an order of possession is withdrawn.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under subsection 9.1(1) of the Act.

Dated: November 05, 2014

Residential Tenancy Branch

