



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding WALL FINANCIAL CORPORATION
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNR, MNDC, 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 and for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67; and
- authorization to recover its filing fee for this application from the tenant pursuant to section 72.

The tenants did not attend this hearing, although I waited until 1113 in order to enable the tenants to connect with this teleconference hearing scheduled for 1100. The landlord's agent 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's agent testified that she personally served the tenants with the dispute resolution package on 27 September 2014. The landlord's agent provided me the tenants' written acknowledgement of personal receipt of these documents. On the basis of this evidence, I am satisfied that the tenants were served with notice of this application pursuant to section 89 of the Act.

The landlord's agent provided sworn testimony that the 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) was served on 2 September 2014 to the tenants by posting the 10 Day Notice to the door of the rental unit. This posting was witnessed by the landlord's assistant manager and I was provided with a proof of service that indicates the same. On the basis of this evidence, I am satisfied that the tenants were deemed served with the 10 Day Notice on 5 September 2014, three days after its posting, pursuant to sections 88 and 90 of the Act.

At the hearing the landlord's agent provided testimony that the tenants vacated the rental unit on 31 October 2014 and as such informed me that she wished to withdraw the landlord's application for an order of possession. The landlord's agent also asked to amend the claim to withdraw the claim for November's late fee, reducing the landlord's claim to \$2,245.00. I allowed both of these amendments.

Issue(s) to be Decided

Is the landlord entitled to a monetary award for unpaid rent and losses arising out of this tenancy? 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, and the testimony of the landlord's agent, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the both 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 tenants on 1 March 2014, indicating a monthly rent of \$735.00 due on the 1st day of the month for a tenancy commencing on 1 March 2014;
- a resident ledger showing the rent owing and paid during this tenancy, which showed rental arrears for September rent of \$735.00, October rent of \$735.00, November rent of \$735 and late fees of \$20.00 for all three months; and
- a copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) posted on the tenants' door at 1302 on 2 September 2014, with a stated effective vacancy date of 13 October 2014, for \$735.00 in unpaid rent.

The 10 Day Notice states that the tenants 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 tenants did not apply to dispute the 10 Day Notice within five days from the date of service.

The landlord's agent provided sworn and uncontested testimony that the landlord had not received any rent payment since August 2014.

The tenancy agreement indicates that the tenants agreed to a late fee of \$20.00 for each month of late rent.

The landlord's agent provided sworn and uncontested testimony that the landlord continues to hold the tenants' security deposit in the amount of \$367.50.

The landlord's agent provided sworn and uncontested testimony that the tenants vacated the rental unit on 31 October 2014. When the tenants vacated they did not clean the rental unit and left furniture behind. The landlord's agent testified that because of the condition in which the tenants left the rental unit, the landlord was unable to rent the rental unit for November and, accordingly, had a rental loss of \$735.00 for that month.

Analysis

I accept the evidence before me that the tenants have failed to pay the rent owed in full within the five days granted under subsection 46(4) of the Act.

Based on the foregoing, I find that the tenants are conclusively presumed under subsection 46(5) of the Act to have accepted that the tenancy ended on the corrected effective date of the 10 Day Notice, 15 October 2014.

I accept the landlord's agent's testimony that no rent has been paid and that rent remains outstanding from September and October in the amount of \$1,510.00, including late fees. I accept the landlord's agent's testimony that the landlord was unable to rent the unit for November because of the condition in which it was left and thus had a rental loss of \$735.00.

The landlord testified that she continued to hold the tenant's \$367.50 security deposit plus interest paid on 1 March 2014. Over that period, no interest is payable. Although the landlord's application does not seek to retain the security deposit, using the offsetting provisions of section 72 of the *Act*, I allow the landlord to retain the security deposit in partial satisfaction of the monetary award.

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.

Therefore, I find that the landlord is entitled to a monetary order of \$1,927.50.

Conclusion

I issue a monetary order in the landlord's favour in the amount of \$1,927.50 under the following terms and I order the landlord to retain the security deposit for this tenancy:

Item	Amount
Unpaid September Rent	\$735.00
Unpaid October Rent	735.00
Loss of November Rent	735.00
Late Fee for September and October	40.00
Less Security Deposit Amount	-367.50
Filing Fee	50.00
Total Monetary Order	\$1,927.50

The landlord is provided with these orders in the above terms and the tenant(s) must be served with this order as soon as possible. Should the tenant(s) 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 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 13, 2014

Residential Tenancy Branch

