



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNR OPR MNSD FF

Introduction:

This hearing dealt with an application by the landlord pursuant to the *Residential Tenancy Act* for orders as follows:

- a) A monetary order pursuant to Section 67;
- b) An Order of Possession pursuant to Sections 46, and 55;
- c) An Order to retain the security deposit pursuant to Section 38; and
- d) An order to recover the filing fee pursuant to Section 72.

SERVICE:

The tenant did not attend. The landlord gave sworn evidence that the Notice to end Tenancy dated September 2, 2014 and the Application for Dispute Resolution were both served by registered mail. It was verified online that delivery was attempted and the Application was available for pickup by the tenant from September 18, 2014 but after several notices was returned to the sender on October 4, 2014. I find that the tenant is deemed to be served with the Application according to sections 88 and 89 of the Act.

Issue(s) to be Decided:

The tenant was issued a Notice to End Tenancy dated September 2, 2014 for unpaid rent. The tenant vacated so the landlord no longer seeks an Order of Possession. Is the landlord entitled to a Monetary Order for rental arrears and filing fee?

Background and Evidence:

The tenant did not attend but is deemed to be served with the Application/Notice of Hearing. The landlord attended and was given opportunity to be heard, to present evidence and to make submissions. The undisputed evidence is that the tenancy commenced on September 15, 2013, a security deposit of \$800 was paid and rent was \$1600 a month. It is undisputed that the tenant paid rent of \$1400 from September 2013 to September 2014, being short \$200 in each month and did not pay rent for October 2014, although she remained in possession.

The landlord said he sold the home but the new owners could not take possession until after October 15, 2014 as the tenant refused to vacate, although the landlord had discussed the non renewal of her tenancy agreement from June 2014. The landlord requests a monetary order for \$2400 short rent (\$200 x 12) plus \$1600 for October 2014, to retain the security deposit to offset the amount owing and recover the filing fee. The tenant submitted no documents and did not attend the hearing to dispute the amount owing.

In evidence are copies of the landlord's bank account statements showing rent deposits for a year and copies of letters sent to the tenant.

On the basis of the solemnly sworn evidence presented at the hearing, a decision has been reached.

Analysis

Monetary Order

Section 26 of the Act requires a tenant to pay rent when due. I find the weight of the evidence is that the tenant did not pay rent in full for 12 months, being short \$200 in each month. Furthermore, I find she paid no rent for October 2014 although she remained in possession. I find that there are rental arrears in the amount of \$4000 (\$2400 short + \$1600 October) representing rental arrears from September 2013 to October 2014. I find the landlord entitled to retain the security deposit to offset the amount owing. Although the landlord stated there were also damages as extensive cleaning was required, I find the landlord had not claimed this on the Application nor provided evidence of such damages, such as invoices etc. so I give him leave to reapply for damages.

Conclusion:

I find the landlord is entitled to a monetary order as calculated below. I find the landlord is entitled to retain the security deposit to offset the rental amount owing and to recover filing fees paid for this application. I dismiss the landlord's claim for damages and give him leave to reapply within the applicable time limits.

Calculation of Monetary Award:

Short rent Sept. 2013-Sept. 2014	2400.00
October rent	1600.00
Filing fee	100.00
Less security deposit (no interest 2013-14)	-800.00
Total Monetary Order to landlord	3300.00

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 04, 2014

Residential Tenancy Branch

