



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNSD, FF

Introduction

This hearing was convened by way of conference call in response to the landlord's application for an Order of Possession for unpaid rent and utilities; for a Monetary Order for unpaid rent or utilities; for an Order permitting the landlord to keep all or part of the tenants' security deposit; and to recover the filing fee from the tenants for the cost of this application.

At the outset of the hearing the landlord advised that the tenants are no longer residing in the rental unit, and therefore, the landlord withdraws the applications for an Order of Possession.

Service of the hearing documents, by the landlord to the tenants, was done in accordance with section 89 of the *Act*, served by registered mail on November 28, 2014. Canada Post tracking numbers were provided by the landlord in documentary evidence.

The landlord appeared, gave sworn testimony, was provided the opportunity to present evidence orally, in writing, and in documentary form. There was no appearance for the tenants, despite being served notice of this hearing in accordance with the *Residential Tenancy Act*. All of the testimony and documentary evidence was carefully considered.

Issue(s) to be Decided

- Is the landlord entitled to a Monetary Order for unpaid rent and utilities?
- Is the landlord entitled to keep the security deposit?

Background and Evidence

The landlord testified that this tenancy started on July 15, 2014 for a fixed term for two years. Rent for this unit was \$1,300.00 per month. Rent was due on the first day of each month. The tenants paid a security deposit of \$650.00 on July 01, 2014.

The landlord testified that the tenants failed to pay rent for November on the day it was due. The tenants communicated by email with the landlord concerning the late rent; however, did not pay the rent as promised so the landlord served the tenants with a 10 Day Notice to End Tenancy for unpaid rent on November 05, 2014 by registered mail. A copy of the registered mail tracking number has been provided in documentary evidence. This Notice informed the tenants that rent is owed for November of \$1,300.00. The Notice also informed the tenants that the tenants have five days to either pay the rent or dispute the Notice or the tenancy will end on November 20, 2014. The landlord testified that the tenants did not pay November rent and have continued to have possession of the unit as the tenants have failed to return the keys to the unit or the mailbox even though it appears that the tenants have abandoned the rental unit at the end of November.

The landlord testified that the tenants failed to clean the unit or make good the walls they painted in the unit. This work has to be completed by the landlord. The landlord testified that the unit has been advertised for rent, but to date remains vacant. The landlord seeks to recover a loss of rental income for December of \$1,300.00.

Analysis

The tenants did not appear at the hearing to dispute the landlord's claims, despite having been served a Notice of the hearing; therefore, in the absence of any evidence from the tenants, I have considered the landlord's documentary evidence and sworn testimony before me. Section 26 of the *Act* states:

A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

I am satisfied with the evidence before me that the tenants failed to pay rent for November, 2014. Consequently I find the landlord is entitled to a monetary award to recover unpaid rent for November of **\$1,300.00** pursuant to s. 67 of the *Act*.

With regard to the landlord's claim for a loss of rental income for December, 2014 of \$1,300.00; a landlord is entitled to be compensated for any loss of rent up to the earliest time that the tenants could legally have ended the tenancy. The tenants had signed a fixed term lease agreement which does not expire until July 31, 2016. The landlord has testified that he has attempted to re-rent the unit for December and has been unsuccessful. I therefore find the landlord is entitled to be compensated for a loss of rental income for December, 2014 of \$1,300.00.

The landlord has established a claim to keep the tenants' security deposit of **\$650.00** pursuant to s. 38(4)(b) of the *Act*. This amount will be offset against the unpaid rent.

As the landlord has been successful with their claim I find the landlord is entitled to recover the **\$50.00** filing fee from the tenants pursuant to section 72(1) of the *Act*. The

landlord will receive a Monetary Order pursuant to s. 67 of the *Act* for the following amount:

Unpaid rent for November	\$1,300.00
Loss of rental income for December	\$1,300.00
Subtotal	\$2,600.00
Less security deposit	(-\$650.00)
Filing fee	\$50.00
Total amount due to the landlord	\$2,000.00

Conclusion

I HEREBY FIND in favor of the landlord's monetary claim. A copy of the landlord's decision will be accompanied by a Monetary Order for **\$2,000.00**. The Order must be served on the tenants; if the tenants fail to comply with the Order, the Order is enforceable through the Provincial Court as an Order 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: December 23, 2014

Residential Tenancy Branch

