



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding ACTION PROPERTY MANAGEMENT
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 the filing fee for this application from the tenant, pursuant to section 72.

The tenant did not attend this hearing, although the hearing lasted approximately 13 minutes in length. The landlord's agent ("landlord") 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 testified that the landlord company for this rental property is an agent providing management services to the personal landlord, LC, who is listed on the tenancy agreement. The landlord's agent confirmed that she is authorized to represent both the landlord company and the personal landlord LC, at this hearing.

The landlord gave sworn testimony that she served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent, dated October 29, 2014 ("10 Day Notice"), by posting it to the tenant's rental unit door on October 29, 2014. The landlord attached a proof of service with a witness signature from DS, with her application. In accordance with sections 88 and 90 of the *Act*, I find that the tenant was deemed served with the 10 Day Notice on November 1, 2014, three days after its posting.

The landlord testified that she served the tenant with the Application for Dispute Resolution hearing package ("Application") on November 26, 2014, by way of registered mail. She provided a Canada Post receipt and tracking number, as proof of service, with her Application. The landlord testified that she checked the tracking number on the day of this hearing and the Canada Post website indicated that a final notice to pick up the Application was sent to the tenant on December 4, 2014 or it would be returned to the sender. In accordance with sections 89 and 90 of the *Act*, I find that the tenant was deemed served with the Application on December 1, 2014, five days after its registered mailing.

During the hearing, the landlord withdrew her application for an order of possession for unpaid rent, as she confirmed that the tenant had vacated the rental unit on November 28, 2014.

Issues to be Decided

Is the landlord entitled to a monetary award for unpaid rent arising out of this tenancy?

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

The landlord testified that this fixed term tenancy began on October 15, 2013 until October 31, 2014, after which it transitioned to a month to month tenancy. Monthly rent in the amount of \$2,400.00 is payable on the first day of each month. A security deposit of \$1,200.00 was paid by the tenant for this tenancy and the landlord continues to retain this deposit. The landlord provided a written tenancy agreement, signed by the tenant and the personal landlord LC on October 9, 2013, with her Application.

The landlord testified that the tenant vacated the rental unit on November 28, 2014. She stated that the landlord drove by the tenant's rental unit a few times to see if he had vacated. The landlord entered the unit on November 28, 2014 to clean and remove a few items, and it was confirmed that the tenant had vacated.

The landlord stated that she was advised by the personal landlord LC that rent in the amount of \$2,400.00 for each of September and October 2014 was unpaid by the tenant. As such, the landlord issued the 10 Day Notice, indicating that rent in the

amount of \$4,800.00 was due on October 1, 2014. The landlord confirmed that no rent payments have been received from the tenant since the 10 Day Notice was served upon him. The landlord is seeking \$4,800.00 for September and October 2014 unpaid rent.

The landlord is seeking to retain the tenant's security deposit of \$1,200.00, which it continues to hold.

The landlord is also seeking to recover the filing fee of \$50.00 for this Application from the tenant.

Analysis

The tenant failed to pay the full rent due on October 1, 2014, within five days of being deemed to have received the 10 Day Notice. The tenant has not made an application pursuant to section 46(4) of the *Act* within five days of being deemed to have received the 10 Day Notice.

The landlord provided undisputed evidence that the tenant failed to pay \$2,400.00 rent for each of September and October 2014, totalling \$4,800.00. Therefore, I find that the landlord is entitled to rental arrears outstanding in the amount of \$4,800.00 against the tenant.

The landlord testified that she continues to hold the tenant's security deposit of \$1,200.00. In accordance with the offsetting provisions of section 72 of the *Act*, I allow the landlord to retain the tenant's 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 the Application.

Conclusion

The landlord's application for an order of possession for unpaid rent, is withdrawn.

I issue a monetary order in the landlord's favour in the amount of \$3,650.00 against the tenant as follows:

Item	Amount
September 2014 Rent	\$2,400.00
October 2014 Rent	2,400.00
Less Security Deposit	-1,200.00
Recovery of Filing Fee for this application	50.00
Total Monetary Award	\$3,650.00

The landlord is provided with a monetary order in the amount of \$3,650.00 in the above terms and the tenant must be served with this Order as soon as possible. Should the tenant fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced 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 19, 2014

Residential Tenancy Branch

