



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding FIRST SERVICE RESIDENTIAL
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNR, MNSD, MNDC, 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 tenant's security deposit; for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act* (the *Act*), regulations or tenancy agreement; and to recover the filing fee from the tenant for the cost of this application.

At the outset of the hearing the landlord advised that the tenant is no longer residing in the rental unit and has abandoned the rental unit and a number of her belongings. Therefore, the landlord withdraws the application for an Order of Possession.

Service of the hearing documents, by the landlord to the tenant, was done in accordance with section 89 of the *Act*, served by registered mail on July 31, 2015. Canada Post tracking numbers were provided by the landlord in documentary evidence.

The landlord's agent (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 tenant, 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?
- Is the landlord entitled to keep the security deposit?
- Is the landlord entitled to a Monetary Order for money owed or compensation for damage or loss?

Background and Evidence

The landlord testified that this tenancy started on August 15, 1994 for a fixed term for a year. Thereafter the tenancy reverted to a month to month tenancy. At the outset of the tenancy the tenant shared the unit with other tenants. On March 02, 2014 the tenant became the sole tenant of the rental unit and shared with another occupant. Rent for this unit was \$890.00 per month and this increased in increments over the course of the tenancy to \$1,188.00. Rent was due on the first day of each month. The tenant paid a security deposit of \$445.00 on August 15, 1994.

The landlord testified that the tenant failed to pay rent for July, 2015 on the day it was due. The landlord served the tenant with a 10 Day Notice to End Tenancy for unpaid rent on July 14, 2015 by posting the Notice to the door. This Notice informed the tenant that rent is owed for July, 2015 of \$1,188.00. The Notice also informed the tenant that they had five days to either pay the rent or dispute the Notice or the tenancy will end on July 24, 2015. The landlord testified that the tenant did not pay July's rent and failed to pay rent for August, and September, 2015. The tenant continued to have possession of the unit as the tenant did not return the keys to the unit or the mailbox and has accessed their mail since the landlord believes the tenant abandoned the rental unit sometime in the last month. The landlord testified that they posted a Notice of entry to the rental unit on September 25, 2015 to do a preliminary move out inspection with the tenant. At that time they found the tenant had removed some personal effects and there were outdated food items in the fridge and cupboards and the unit was in an extremely

disorganised and unkempt condition. The tenant had also made contact with a member of the landlord's staff to inform them that she was now living at a relative's home.

The landlord testified that the tenant failed to clean the unit and has left a great deal of abandoned belongings in the unit. The landlord will need to clear the unit, make an inventory of any of the tenant's belongings put into storage and then clean the unit before it can be advertised for rent. Due to this the landlord seeks to recover a loss of rental income for October, 2015 of \$1,188.00.

Analysis

The tenant 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 tenant, 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 tenant failed to pay rent for July, August and September, 2015. The landlord is unable to determine at this time when the tenant abandoned the rental unit although the tenant did contact a member of staff to inform them that she was living at a relative's home. Consequently I find the landlord is entitled to a monetary award to recover unpaid rent for July, August and September, 2015 of **\$3,564.00** pursuant to s. 67 of the *Act*.

With regard to the landlord's claim for a loss of rental income for October of \$1,188.00; the tenant is required to ensure the rental unit is clean and all personal belongings removed from the rental unit. If the tenant fails to do so and renders the unit unfit for

re-rental the landlord is entitled to claim damages for loss of rent for the following month. The landlord is required to mitigate the loss by completing any required work in a timely manner. The landlord has testified that they believe the tenant abandoned the rental unit but continued to have access during September, 2015 as the tenant collected mail and removed a Notice of Entry from the front door. As the landlord was then able to determine abandonment of the rental unit under part five of the regulations I find the landlord is entitled to consider the rental unit and any belongings left in the unit to be abandoned and may deal with these under part five of the regulations. As the landlord has testified to the amount of work involved in getting the unit in a condition that it is suitable to be advertised and re-rented I find the landlord is entitled to recover a loss of rental income for October, 2015 to complete this work. I therefore uphold the landlord's claim to recover the amount of \$1,188.00.

The landlord has established a claim to keep the tenant's' security deposit of \$445.00 plus accrued interest of \$94.08 pursuant to s. 38(4)(b) of the *Act*. This amount of **\$539.08** 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 tenant 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 three months	\$3,564.00
Loss of rental income for October	\$1,188.00
Subtotal	\$4,752.00

Less security deposit and accrued interest	(-\$539.08)
Filing fee	\$50.00
Total amount due to the landlord	\$4262.92

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 **\$4,262.92**. The Order must be served on the tenant; if the tenant fails 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: October 06, 2015

Residential Tenancy Branch

