



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNSD, FF

Introduction

This hearing was convened in response to an application by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. An Order of Possession - Section 55;
2. A Monetary Order for unpaid rent - Section 67;
3. An Order to retain the security deposit - Section 38; and
4. An Order to recover the filing fee for this application - Section 72.

I accept the Landlord’s evidence that the Tenant was served with the application for dispute resolution and notice of hearing by registered mail in accordance with Section 89 of the Act. The Tenant did not participate in the conference call hearing. The Landlord was given full opportunity to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Is the Landlord entitled to an order of possession?

Has the Tenant failed to pay rent?

Background and Evidence

The tenancy started on August 15, 2014. At the outset rent of \$1,200.00 was payable monthly on the first day of each month and the Landlord collected \$600.00 as security deposit. Three months in advance of the effective date of September 1, 2015 the

Landlord served the Tenant with a notice of rent increase on an RTB form and in the amount allowed under the Act. This increase resulted in a monthly rental of \$1,230.00.

The Tenant owed arrears of \$1,710.00 to an including September 2015 and failed to pay rent for October 2013. On October 19, 2015 the Landlord served the Tenant with a 10 day notice to end tenancy for unpaid rent (the "Notice"). The rental arrears indicated on the Notice includes five past NSF fees of \$35.00 as provided in the tenancy agreement.

In November 2015 the Tenant paid the Landlord a total of \$1,500.00. No rent has been paid since and the Tenant has not moved out of the unit. The Landlord claims unpaid rent to and including January 2016 and requests an order of possession for January 31, 2016.

Analysis

Section 55 of the Act provides that a landlord may request an order of possession of a rental unit by making an application for dispute resolution where a notice to end the tenancy has been given by the landlord, the tenant has not disputed the Notice by making an application for dispute resolution and the time for making that application has expired. Based on the Landlord's undisputed evidence I find that the Tenant was served with a valid Notice, did not dispute the Notice and has not moved out of the unit. The Landlord is therefore entitled to an order of possession.

Section 7 of the RTB Regulations provides that if provided for under a tenancy agreement, a landlord may charge an NSF fee of no more than \$25.00. Section 6 of the Act provides that a term of a tenancy agreement is not enforceable if the term is inconsistent with this Act or the regulations. As the tenancy agreement contains an NSF amount that is greater than allowed under the Regulation, I find that the provision is inconsistent with the Regulation and therefore not enforceable. As this provision is not enforceable I find that the Landlord could not collect the total amount of \$175.00 during the tenancy and I deduct this amount from the arrears claimed leaving the total

amount of rental arrears to and including October at \$2,765. Based on the undisputed evidence of rents collected to date, I find that the Tenant overall owes a total rent of **\$4,955.00** to and including January 2016. Deducting the security deposit plus zero interest of **\$600.00** leaves **\$4,355.00**. As the Landlord has been successful I find that the Landlord is also entitled to recover the **\$50.00** filing fee for a total entitlement of **\$4,405.00**

Conclusion

I grant an Order of Possession to the Landlord effective 1:00 p.m. on January 31, 2016.

I order that the Landlord retain the **deposit** and interest of \$600.00 in partial satisfaction of the claim and I grant the Landlord an order under Section 67 of the Act for the balance due of **\$4,405.00**. If necessary, this order may be filed in the Small Claims 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: January 11, 2016

Residential Tenancy Branch

