



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

OPR, MNR, MNSD, MNDC, 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 / loss - Section 67;
3. An Order to retain the security deposit - Section 38
4. An Order to recover the filing fee for this application - Section 72.

I accept the landlord's evidence that despite the tenant having been served with the application for dispute resolution and notice of hearing by posting it on their door on November 26, 2015, in accordance with Section 89(2) of the Act, the tenant did not participate in the conference call hearing. The landlord was given opportunity to be heard, present evidence and make submissions.

The landlord submitted late evidence on January 12, 2016 and testified they posted it on the rental unit door.

Issue(s) to be Decided

Is the notice to end tenancy valid?

Is the landlord entitled to an Order of Possession?

Is the landlord entitled to the monetary amounts claimed?

Background and Evidence

The tenancy began on December 01, 2014. Rent in the amount of \$675.00 is payable in advance on the first day of each month. At the outset of the tenancy, the landlord collected a security deposit from the tenant in the amount of \$337.50 which they retain in trust.

The landlord testified that following the tenant's apparent absence from the unit for several months while still satisfying the rent, the tenant failed to pay rent in the month of November 2015. The landlord further testified serving the tenant with a 10 Day Notice to End Tenancy for non-payment of rent on November 02, 2015 by posting it to their door, as prescribed by Section 88 of the Act. The landlord testified they also sent the notice to the tenant by e-mail, to which the landlord claims the tenant responded. I do not have benefit of a copy of the notice. Regardless, the landlord testified the tenant did not satisfy the rent for November 2015 and has not returned to the unit, nor has the landlord received any further communication from the tenant. The landlord filed for dispute resolution.

The landlord testified about posting a notice to enter and upon accessing the unit found it unclean, and in disarray. The landlord determined the unit as abandoned and removed and placed the tenant's belongings into storage at the end of November, 2015. The rental unit was cleaned and re-rented to a new tenant for December 2015.

The landlord's *original* application sought compensation for damages, and for loss of revenue in addition to an Order of Possession for non-payment of rent and to recover unpaid rent - for a total monetary claim of \$337.50.

The landlord's late evidence consists of a *move in* condition inspection document from the outset of the tenancy, one photograph of a motorcycle inside of what the landlord claims is the rental unit, and additional photographs which are not discernible. The landlord submitted an invoice for "Repair and fix suite" in the amount of \$660.00, and a document outlining available storage rates – claimed to be in support for storage of the tenant's belongings – for which the landlord claims \$393.75 .

Analysis

On preponderance of the undisputed testimony and admissible evidence in this matter I find as follows.

In the absence of a copy of the 10 Day Notice to End I am not able to determine the validity of the Notice in respect to the request for an Order of Possession. However, the landlord deemed the rental unit abandoned. The landlord removed and stored the tenant's belongings, and re-rented the unit; with the effect the landlord has regained possession. As a result of the above I decline to grant the landlord an Order of Possession.

I accept the landlord's testimony the tenant did not pay the rent for November 2015, and the landlord acknowledged they did not incur additional loss of rent thereafter. The landlord is owed unpaid rent for November 2015 in the amount of \$675.00.

I am not satisfied that any of the landlord's late evidence is known to the tenant, in part as the landlord posted it on the rental unit door some 6 weeks after they took back possession of the rental unit due to abandonment. Moreover, the landlord did not formally amend their monetary claim and re-served the tenant with their amended claim. As a result of all the above, I dismiss the balance of the landlord's monetary claim, *with leave to reapply*.

As the landlord has in part been successful in their claim they are entitled to recover the \$50.00 filing fee. The security deposit will be off-set from the award made herein.

Calculation for Monetary Order

Unpaid rent for November 2015	\$675.00
Filing Fee	\$50.00
<i>Less Security Deposit</i>	<i>-\$337.50</i>
Total Monetary Award to landlord	\$387.50

Conclusion

I Order that the landlord retain the deposit and interest of \$337.50 in partial satisfaction of the claim and I grant the landlord an Order under Section 67 of the Act for the balance due of **\$387.50**. If necessary, this Order may be filed in the Small Claims Court and enforced as an Order of that Court.

This Decision is final and binding on both parties.

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 19, 2016

Residential Tenancy Branch

