



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding HOLLYBURN PROPERTIES and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes: OPR, MNR, MNDC, FF

Introduction

This hearing dealt with an application by the landlord pursuant to the *Residential Tenancy Act* for an order of possession and for a monetary order for unpaid rent, for loss of income and for the recovery of the filing fee.

The notice of hearing was served on the tenant on February 26, 2019 by registered mail to the address of the rental unit. The tenant was residing in the rental unit at that time. The landlord filed copies of the tracking slips. The landlord testified that the registered mail was unclaimed by the tenant and returned to the landlord. As the tenant cannot evade service by neglecting to pick up registered mail, I find the tenant was duly served with the notice of hearing. Despite having been served the notice of hearing, the tenant did not attend the hearing. The landlord attended the hearing and was given full opportunity to present evidence and make submissions.

The landlord testified that the tenant was seen moving furniture out of the rental unit on March 02, 2019 and admitted to moving out when questioned by the resident manager. Since the tenant has moved out, the landlord withdrew his application for an order of possession. Therefore, this hearing only dealt with the landlord's monetary claim.

Issues to be decided

Is the landlord entitled to a monetary order to recover unpaid rent, loss of income and the filing fee?

Background and Evidence

A copy of the tenancy agreement was filed into evidence. The tenancy started on November 01, 2017. The monthly rent was \$1,875.00 due on the first of each month. Prior to moving in, the tenant paid a security deposit of \$937.50.

A clause in the agreement requires the tenant to pay a late fee of \$25.00 for rent paid after the due date of the first of each month.

The landlord testified that the tenant failed to pay rent that was due on January 01, 2019. On January 03, 2019, the landlord served the tenant with a ten-day notice to end tenancy for \$1,875.00 in unpaid rent. The tenant did not dispute the notice and continued to occupy the rental unit.

On February 01, 2019, the tenant paid partial rent in the amount of \$800.00 and the landlord provided the tenant with a receipt for use and occupancy only.

The landlord stated that on March 02, 2019, the resident manager of apartment building spotted the tenant moving furniture out of the building. The manager questioned the tenant who admitted to moving out without informing the landlord or providing proper notice. The manager made two attempts in writing, to set up an appointment for a move out inspection. The tenant did not respond to the requests nor did he attend either of the two appointments.

The landlord stated that the tenant's vehicle was parked in the parking lot and therefore the landlord was not sure of when the tenant intended to return the keys to the landlord. The landlord stated that as of the date of this hearing, the tenant has not returned the keys to the apartment. On March 11, 2019, the landlord advertised the availability of the rental unit and filed evidence to support his testimony. The landlord found a new tenant for April 01, 2019 and is claiming a loss of income for the month of March 2019.

The landlord is also claiming late fees for the months of January and February in the total amount of \$50.00. During the hearing the landlord requested that the security deposit of \$937.50 be offset against his monetary claim.

The landlord is claiming the following:

1.	Unpaid rent for January 2019	\$1,875.00
2.	Unpaid rent for February 2019	\$1,075.00
3.	Loss of income for March 2019	\$1,875.00
4.	Late fees	\$50.00
5.	Filing fee	\$100.00
	Total	\$4,975.00

Analysis

Based on the undisputed sworn testimony of the landlord, I accept the landlord's evidence in respect of the claim. I find that the landlord has proven his claim for unpaid rent and late fees.

Section 7 of the Act provides:

7 (1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

I further find that the landlord made attempts to mitigate his losses by advertising the availability of the rental unit. Despite his efforts the landlord suffered a loss of income for the month of March 2019 and therefore I find that the landlord is entitled to recover this loss. Since the landlord has proven his case, I also award him the recovery of the filing fee of \$100.00.

I order that the landlord retain the security deposit of \$937.50 in partial satisfaction of the claim and I grant the landlord an order under section 67 of the *Residential Tenancy Act* for the balance due of \$4,037.50. This order may be filed in the Small Claims Court and enforced as an order of that Court.

Conclusion

I grant the landlord a monetary order in the amount of **\$4,037.50**.

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: April 05, 2019

Residential Tenancy Branch