



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR MNR MNSD FF

Introduction

This hearing was convened as a result of the landlord's Application for Dispute Resolution. A participatory hearing, via teleconference, was held on January 6, 2023. The landlord applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- an order of possession based off a 10 Day Notice to End Tenancy (the Notice) for unpaid rent or utilities;
- a monetary order for unpaid rent or utilities;
- 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,
- to recover the filing fee from the tenants for the cost of this application.

The landlord's agent (the "agent") attended the hearing and provided affirmed testimony. The tenant did not attend the hearing.

The agent testified that she sent the Notice of Dispute Resolution Proceeding and evidence to the Tenant by registered mail on December 2, 2022. Proof of mailing was provided into evidence. I find the tenant is deemed to have received this package on December 7, 2022, the fifth day after its registered mailing, pursuant to Section 90 of the Act.

Also, the agent stated that she no longer requires an order of possession, given that the tenants moved out sometime in December 2022. In consideration this, I hereby amend the agent's application accordingly.

The agent was provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

1. Is the landlord entitled to a monetary order for unpaid rent or utilities?
2. Is the landlord authorized to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested, pursuant to section 38?
3. Is the landlord entitled to recover the filing fee from the tenant for the cost of this application?

Background and Evidence

The agent testified that monthly rent is \$4,000.00 and is due on the first of the month. The agent testified that the landlord currently holds a security deposit of \$2,000.00. The agent also stated that the tenant has failed to pay any rent for the month of November 2022.

The agent testified that she sent the 10 Day Notice to End Tenancy for Unpaid Rent and Utilities to the Tenant by registered mail on November 8, 2022. Proof of mailing was provided into evidence. The agent testified that, as per the 10 Day Notice, the tenants owed \$4,000.00 in rent at the time the notice was issued. The agent stated that the Tenant still owes this amount, and never paid it before moving out mid-December 2022.

Analysis

Based on the unchallenged affirmed testimony, and on a balance of probabilities, I find as follows:

Section 26 of the *Act* confirms that a tenant must pay rent when it is due unless the tenant has a right under the *Act* to deduct all or a portion of rent.

With respect to the agent's request for a Monetary Order for unpaid rent, I find there is sufficient evidence from her undisputed evidence and testimony before me to demonstrate that the tenant owes and has failed to pay \$4,000.00 in rent for November 2022.

Section 72 of the *Act* gives me authority to order the repayment of a fee for an application for dispute resolution. Since the landlord was substantially successful in this hearing, I order the tenant to repay the \$100. Also, pursuant to sections 72 of the *Act*, I authorize that the security deposit, currently held by the landlord, be kept and used to offset the amount of rent still owed by the tenants. In summary, I grant the monetary order based on the following:

Claim	Amount
Unpaid rent	\$4,000.00
Filing fee	\$100.00
Less:	
Security Deposit currently held by Landlord	(\$2,000.00)
TOTAL:	\$2,100.00

Conclusion

The landlord is granted a monetary order pursuant to Section 67 in the amount of **\$2,100.00** comprised of rent owed. This order must be served on the tenant. If the tenant fails to comply with this order the landlord may file the order in the Provincial Court (Small Claims) and be 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 06, 2023

Residential Tenancy Branch