



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards
Ministry of Housing and Social Development

Decision

Dispute Codes: MNR MNSD OPR FF

Introduction

This hearing was scheduled in response to the Landlord's Application for Dispute Resolution, in which the Landlord has made application for an Order of Possession for Unpaid Rent, a monetary Order for unpaid rent, to retain all or part of the security deposit, and to recover the filing fee from the Tenant for the cost of this Application for Dispute Resolution. At the beginning of the hearing the Agent for the Landlord withdrew the application for an Order of Possession, as the Tenant had vacated the rental unit on December 02, 2008.

The Agent for the Landlord stated that copies of the Application for Dispute Resolution and Notice of Hearing were sent to the Tenant via registered mail at the address noted on the Application, on November 25, 2008. A tracking number was provided. The Canada Post website shows the mail was not picked up by the recipient. These documents are deemed to have been served in accordance with section 89 of the *Residential Tenancy Act (Act)*, however the Tenant did not appear at the hearing.

Issue(s) to be Decided

The issues to be decided are whether the Landlord is entitled to a monetary Order for unpaid rent; to keep all or part of the security deposit; and to recover the filing fee from the Tenant for the cost of the Application for Dispute Resolution, pursuant to sections 38, 67, and 72 of the *Act*.

Background and Evidence

The Agent for the Landlord stated that the Tenant is required to pay monthly rent of \$760.00 and a \$20.00 monthly parking fee. The Agent stated that the Tenant paid a security deposit of \$380.00 on April 29, 2008.

The Agent for the Landlord stated that a ten (10) day Notice to End Tenancy for non-payment of rent, which had an effective date of November 12, 2008, was posted on the front door of the rental unit on October 31, 2008. The Notice indicated that the Notice would be automatically cancelled if the Landlord received \$850.00 within five days after the Tenant is assumed to have received the Notice. The Notice also indicated that the Tenant is presumed to have accepted that the tenancy is ending and that the Tenant must move out of the rental by the date set out in the Notice unless the Tenant files an Application for Dispute Resolution within five days.

The Agent for the Landlord stated that the Tenant still owes \$20.00 in parking fees from September of 2008; \$760.00 in unpaid rent from October of 2008; \$20.00 in parking fees from October of 2008; \$25.00 in late fees from October of 2008; \$25.00 in an NSF cheque fee from October of 2008; \$760.00 in unpaid rent from November of 2008; \$20.00 in parking fees from November of 2008; \$25.00 in late fees from November of 2008; and \$25.00 in an NSF cheque fee from November of 2008.

The Landlord is seeking compensation for loss of revenue for the month of December, in the amount of \$780.00, as the Tenant did not vacate the rental unit, as required by the Notice to End Tenancy, on November 12, 2008, which prevented the Landlord from finding a new tenant for December 01, 2008. The rental unit is currently vacant.

Analysis

In the absence of evidence to the contrary, I find that the Tenant has not paid rent in the amount of \$1,520.00 from October and November of 2008, and that the Landlord is entitled to compensation in that amount.

In the absence of evidence to the contrary, I find that the Tenant has not paid parking fees in the amount of \$60.00 from September, October and November of 2008, and that the Landlord is entitled to compensation in that amount.

In the absence of evidence to the contrary, I find that the Tenant was late paying rent in October and November; that she agreed in her tenancy agreement to pay a late fee of \$25.00; and that the Landlord is entitled to \$50.00 as compensation for paying rent late on these two occasions.

In the absence of evidence to the contrary, I find that the Tenant's rent cheques from October and November were returned by the bank due to insufficient funds; that the Tenant agreed in her tenancy agreement to pay an NSF fee of \$25.00; and that the Landlord is entitled to \$50.00 as compensation for having her cheque returned on these two occasions.

I find that the Tenants did not comply with the Act when they did not vacate the rental unit on November 12, 2008. I find that the Tenant's actions prevented the Landlord

from finding new tenants for December 01, 2008, as the Landlord did not have reasonable notice that the rental unit would be vacated by that date. I find that the Landlord is therefore entitled to compensation for loss of revenue from December 01, 2008 to December 14, 2008, in the amount of \$390.00. I dismiss the Landlord's application for compensation for loss of revenue from December 15, 2008 to December 31, 2008, with leave to reapply on this single issue, if the Landlord is unable to rent the unit for December 15, 2008.

I find that the Landlords application has merit, and I find that the Landlord is entitled to recover the filing fee from the Tenant for the cost of this Application for Dispute Resolution.

I find that the Landlord is entitled to retain the Tenant's security deposit plus interest, in the amount of \$383.54, in partial satisfaction of the monetary claim.

Conclusion

I find that the Landlord has established a monetary claim, in the amount of \$2,120.00, which is comprised on \$1,520.00 in unpaid rent, \$60.00 in unpaid parking fees, \$50.00 in late fees, \$50.00 in NSF fees, \$390.00 in loss of revenue for December of 2008; and \$50.00 in compensation for the filing fee paid by the Landlord for this Application for Dispute Resolution. The Landlord will be retaining the Tenant's security deposit plus interest, in the amount of \$383.54, in partial satisfaction of the monetary claim.

Based on these determinations I grant the Landlord a monetary Order for the balance of \$1,736.46. In the event that the Tenant does not comply with this Order, it may be served on the Tenant, filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

Dated: December 11, 2008