



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes MNR, MNSD, FF

Introduction

This hearing dealt with the landlord's application for a Monetary Order for unpaid rent, retention of the security deposit and recovery of the filing fee. Both parties appeared at the hearing and were provided the opportunity to be heard and respond to the other party's submissions.

Issues(s) to be Decided

1. Has the landlord established an entitlement to unpaid rent?
2. Retention of the security deposit.
3. Award of the filing fee.

Background and Evidence

Upon hearing testimony of both parties, I make the following findings. The tenancy commenced December 1, 2007. The tenants paid a \$350.00 security deposit in October 2007. The tenancy was initially a fixed term of one year and then converted to a month-to-month tenancy. The tenants were required to pay \$700.00 on the 1st day of the month. The tenants did not pay rent for the month of March 2009 and vacated the rental unit on March 7, 2009. The tenants did not provide the landlord notice that they were ending the tenancy.

In making this application, the landlord is seeking to recover unpaid rent for the month of March 2009 in the amount of \$700.00. The landlord is requesting to retain the tenants' security deposit in partial satisfaction of that amount.



Dispute Resolution Services

Page: 2

Residential Tenancy Branch
Ministry of Housing and Social Development

The tenant testified that on or about March 3, 2009 the tenant's husband discovered mould in the basement or crawlspace. Concerned about the health of her family, including a young son, the tenants decided to vacate the rental unit right away rather than contact the landlord and wait for an inspection.

Upon enquiry of the tenant's father, the landlord testified that the rental unit was re-rented for April 2009.

Analysis

Section 26 of the Act provides that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with the Act, regulations or tenancy agreement. Only in limited circumstances is a tenant permitted to withhold or not pay rent. In accordance with the terms of the tenancy agreement, the tenants were obligated to pay rent on March 1, 2009, and I find that the tenants did not have any authorization from a Dispute Resolution Officer or any other legal basis under the Act to withhold rent for the month of March 2009.

I am satisfied the landlord did whatever was reasonable to minimize the loss of rent by re-renting the unit for April 2009. Therefore, the landlord has established an entitlement to recover unpaid rent of \$700.00 from the tenants for the month of March 2009.

I authorize the landlord to retain the tenants' security deposit and accrued interest in partial satisfaction of the unpaid rent. As the landlord was successful with this application, the landlord is also awarded the cost of the filing fee.



Dispute Resolution Services

Page: 3

Residential Tenancy Branch
Ministry of Housing and Social Development

In light of the above findings, I provide the landlord with a Monetary Order calculated as follows:

Unpaid rent – March 2009	\$ 700.00
Filing fee	50.00
Less: security deposit and accrued interest	<u>(356.39)</u>
Monetary Order	<u>\$ 393.61</u>

The landlord must serve the Monetary Order upon the tenants and may file it in Provincial Court (Small Claims) to enforce as an Order of that court.

Conclusion

The landlord is entitled to unpaid rent of \$700.00 and recovery of the filing fee. The landlord is authorized to retain the tenants' security deposit and accrued interest in partial satisfaction of these awards. The landlord is also provided a Monetary Order in the amount of \$393.61.

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: May 08, 2009.

Dispute Resolution Officer