



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes OPR, MNR, MNSD, FF

Introduction

This matter dealt with an application by the landlord for an Order of Possession pursuant to Section 55 and a Monetary Order for unpaid rent pursuant to Section 67 and to recover the filing fee for this proceeding. The landlord also applied to keep all or part of the security deposit.

Service of the hearing documents was done in accordance with section 89 of the *Act*. They were hand delivered to the tenant on May 12, 2009 and witnessed. The landlord has provided evidence of this service. At the outset of the hearing the landlord confirmed that the tenants have moved out and as a result they abandoned their application for an Order of Possession.

The landlord appeared, gave affirmed testimony, was provided the opportunity to present her evidence orally, in writing, and in documentary form. There was no appearance for the tenant, despite being served notice of this hearing in accordance with the *Residential Tenancy Act*. On the basis of the affirmed evidence presented at the hearing I have determined:

Issues(s) to be Decided

- Are there arrears of rent and if so, how much?
- Is the landlord entitled to keep all or part of the security deposit and interest?
- Whether the landlord is entitled to a Monetary Order to recover the filing fee?

Background and Evidence

This tenancy started on January 16, 2009 and ended on May 31, 2009. This was a fixed term tenancy due to end on January 01, 2010. Rent was \$850.00 per month. The tenants paid a security deposit of \$425.00 and a pet damage deposit of \$425.00 on January 16, 2009.

The landlord served the tenant with a 10 Day Notice to End Tenancy for unpaid rent on May 02, 2009. The tenant owes rent for May, 2009 of \$850.00. The tenancy agreement has a clause that required the tenant to pay the sum of \$850.00 if the tenancy ended before the fixed term. The landlord has provided evidence of the agreement with the tenant to withhold the security and pet damage deposits to cover this amount. The tenants outstanding rent is \$850.00 and the tenancy agreement states that the landlord can charge \$25.00 for late payment fees.

Analysis

In the absence of any evidence from the tenants, I find that the landlord is entitled to recover rent arrears for May, 2009 of \$850.00. I also find that the landlord is entitled to recover \$25.00 in late fees for May as specified in the tenancy agreement. As the landlord has been successful in this matter, she is also entitled to recover her \$50.00 filing fee for this proceeding.

The *Residential Tenancy Act* section 38(4) states that a landlord may retain the tenant's security and pet damage deposits if the tenants agree in writing that the landlord may retain this amount to pay a liability or obligation of the tenant. In this case the tenant has agreed in writing that the landlord may retain the amount of \$850.00 to cover the clause in the tenancy agreement for liquidated damages due to the tenancy agreement ending before the due date. As a result of this agreement the landlord has abandoned her claim



Dispute Resolution Services

Page: 3

Residential Tenancy Branch
Ministry of Housing and Social Development

to retain the security and pet damage deposits to use in partial payment against the outstanding rent.

A Monetary Order will be issued to the landlord for the following amount:

Outstanding rent	\$850.00
Filing fee	\$50.00
Total amount due to the landlord	\$925.00

Conclusion

I HEREBY FIND in favor of the landlord's monetary claim. A copy of the landlord's decision will be accompanied by a Monetary Order for **\$925.00**. The order must be served on the respondent and is enforceable through the Provincial Court 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: June 18, 2009.

Dispute Resolution Officer