



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes OPR, MNR, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord for an Order of Possession, a Monetary Order to recover unpaid rent and utilities and a Monetary Order to recover the filing fee. During the hearing the landlord stated that the tenant has moved from the rental property and therefore withdraws her application for an Order of Possession.

Service of the hearing documents, by the landlord to the tenant, was done in accordance with section 89 of the *Act*. The documents were given to an adult who apparently resides with the tenant at her new address pursuant to section 89(2)(c). The person serving these documents gave affirmed testimony to this effect. The tenant was deemed to be served the hearing documents on June 17, 2009. The landlord served an amended copy of her application but was unable to confirm if the tenant had received these. Therefore, only the original information will be heard at today's hearing.

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

All of the testimony and documentary evidence was carefully considered.

Issues(s) to be Decided

- Are there arrears of rent and utilities and if so, how much?
- Whether the landlord is entitled to a Monetary Order to recover the unpaid rent, utilities and filing fee?

Background and Evidence

This tenancy started on or around March 14, 2007 which is the date the tenant paid a security deposit for the rental unit of \$500.00. The landlord took over the property from the previous owners

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but was not supplied with any documents pertaining to this tenancy. The landlord and tenant had a month to month tenancy agreement and rent was \$1,150.00 per month due on the 1st of each month.

The landlord testifies that the tenant gave her notice to end the tenancy dated June 01, 2009 and this was received on June 02, 2009. This letter stated that the tenancy would end on July 01, 2009. The tenant stated in her letter that she was ending the tenancy due to the unbearable noise from the business below her unit which had been rented out to a cabinet maker by the landlord.

The tenant did not pay her rent for June when it was due and on June 08 the landlord served the tenant with a 10 Day Notice for unpaid rent. The tenant gave the landlord a cheque for \$650.00 dated June 09, 2009. This was \$500.00 towards her rent and \$150.00 for utility bills. The tenant withheld the remainder of the rent of \$500.00 as she stated in her documentary evidence that this was her security deposit she had original paid to the previous owners of the property. The cheque for \$650.00 was returned as there were insufficient funds. When the landlord spoke to the bank she was told that a stop had been put on the cheque. The cheque had also been written incorrectly by not showing the correct amount in writing. The tenant moved from the property by the given date on the Notice of June 18, 2009.

Analysis

RTB Policy Guideline #3 – Claims for Rent and Damages for Loss of Rent states that a landlord may elect to end a tenancy and sue the tenant for loss of rent. The damages to which a landlord is entitled is an amount sufficient to compensate the landlord for any loss of rent up to the earliest time the tenant could have legally ended the tenancy. Under section 45 of the Act, a tenant of a month-to-month tenancy must give one clear months notice. . The tenant did not give Notice to end the tenancy until June 02, 2009. This was not one clear months notice pursuant to section 45(1) of the Act .Consequently, the earliest the tenant could have ended the tenancy would have been July 31, 2009. However, the landlord is unable to provide evidence that the tenant received their amended application for the hearing that included the additional claim for Julys rent and damages to the unit. In this instance the tenant is unaware that the landlord has amended their claim to include loss of revenue for July, 2009 and I find that at this time the landlord is only able to claim for rent arrears for June, 2009 of \$1,150.00. Due to this I give the landlord leave to reapply for the additional amounts as stated on her amended application.



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The tenant withheld \$500.00 of the rent due for June, 2009 in lieu of the security deposit she had original paid to the previous landlord. Therefore, I find she has breached the terms of her agreement with the landlord to pay rent and of the residential tenancy agreement which states: A tenant must pay rent to the landlord when it is due pursuant to section 26 of the Act.

As the landlord has been partially successful with their application I find they are entitled to recover the \$50.00 filing fee for this proceeding. A Monetary Order has been issued to the landlord for the following amount:

| | |
|----------------------------------|------------|
| Rent arrears for June | \$1,150.00 |
| Filing fee | \$50.00 |
| Total amount due to the landlord | \$1,200.00 |

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 \$1,200.00. The order must be served on the tenant and is enforceable through the Provincial Court as an order of that Court.

I dismiss the landlords amended application with leave to reapply.

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: July 14, 2009.

Dispute Resolution Officer