



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes OPR, OPB, MNR, MNSD, FF

Introduction

This hearing dealt with the landlord's application for an Order of Possession for unpaid rent and breach of an agreement; and for a Monetary Order for unpaid rent; authorization to retain the security deposit and recovery of the filing fee. The tenant did not appear at the hearing. The landlord testified that he personally served the hearing documents upon the tenant on September 15, 2010 as she was vacating the rental unit. The landlord provided a Proof of Service document complete with the tenant's signature acknowledging receipt of the hearing documents. Having been satisfied the tenant has been sufficiently served I proceeded to hear from the landlord without the tenant present.

As the landlord stated the tenant has vacated the rental unit an Order of Possession is no longer necessary and I do not provide one with this decision.

Issues(s) to be Decided

1. Is the landlord entitled to a Monetary Order for unpaid rent?
2. Is the landlord entitled to NSF fees as claimed?
3. Is the landlord authorized to retain the security deposit?

Background and Evidence

The landlord provided the following undisputed evidence. The tenancy commenced July 1, 2010 and the tenant paid a \$487.50 security deposit. The tenancy agreement

requires the tenant to pay rent of \$975.00 on the 1st day of every month for a fixed term of one year. The tenancy agreement also provides for late fees and NSF fees in an addendum. The tenant's rent cheques and replacement cheques bounced five times. The tenant failed to pay rent for September 2010 and vacated the rental unit September 15, 2010. The rental unit was re-rented for October 1, 2010.

In making this application the landlord is seeking compensation for the unpaid rent for September and five late fees of \$25.00 each.

Provided as evidence by the landlord was a copy of the tenancy agreement and addendum; 10 Day Notices issued July 9, 2010, August 2, 2010, August 20, 2010, and September 2, 2010; and various notes from the tenant with respect to paying rent and giving notice to vacate.

Analysis

Upon review of the tenancy agreement and evidence before me I am satisfied the tenant was obligated to pay rent for the month of September 2010 in the amount of \$975.00 and failed to do so. Therefore, I award the landlord \$975.00 for unpaid rent as claimed.

With respect to late fees and administrative fees for NSF cheques section 7 of the Residential Tenancy Regulations limits the amount a landlord may charge to no more than \$25.00 and requires that such a fee must be included in the tenancy agreement. Upon review of the addendum to the tenancy agreement I note that the addendum provides for a charge of \$50.00 for each late fee and NSF fee. Section 6 of the Act provides that a term of a tenancy agreement is not enforceable if the term is inconsistent with the Act or the regulations. In this case, I find the term in the addendum that provides for the payment of late fees and NSF fees is unenforceable

since it is inconsistent with the regulations. Therefore, I do not award NSF fees to the landlord.

I award the landlord the cost of filing this application and authorize the landlord to retain the tenant's security deposit in partial satisfaction of the rent owed the landlord. The landlord is provided a Monetary Order in the amount of \$537.50 (\$975.00 + \$50.00 - \$487.50) to serve upon the tenant.

The Monetary Order may be filed in Provincial Court (Small Claim) to enforce as an Order of that court.

Conclusion

The landlord has been authorized to retain the tenant's security deposit and has been provided a Monetary Order for the balance owing of \$537.50 to serve upon the tenant.

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: October 22, 2010.

Dispute Resolution Officer