

DECISION

Dispute Codes OPR, MNR, MNSD, FF, O

Introduction

The landlord applied pursuant to the *Residential Tenancy Act* (the *Act*) for:

- an Order of Possession pursuant to section 55;
- a monetary order for unpaid rent pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested, pursuant to section 38; and
- authorization to recover his filing fee for this application from the tenant pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present evidence and to make submissions. The landlord testified that she posted a 10 Day Notice to End Tenancy for Unpaid Rent on the tenant's door on November 2, 2010. Her husband testified that he witnessed this posting. The landlord also testified that she sent the tenant a copy of her application for dispute resolution by registered mail on November 25, 2010. She provided the Canada Post Tracking Number. The tenant confirmed that he received the 10 Day Notice and the landlord's application for dispute resolution. I am satisfied that the landlord served these documents to the tenant in accordance with the *Act*.

At the commencement of the hearing, the landlord said that she was no longer seeking an Order of Possession as the tenant vacated the rental unit on November 15, 2010. I accepted her withdrawal of that portion of her application.

Issues(s) to be Decided

Is the landlord entitled to a monetary award for unpaid rent for November 2010? Is the landlord entitled to retain the tenant's security deposit in partial satisfaction of the monetary award requested? Is the landlord entitled to recover her filing fee from the tenant?

Background and Evidence

This fixed term tenancy commenced on August 1, 2010. Monthly rent was set at \$1,325.00, payable on the first of the month. The landlord continues to hold the tenant's \$662.50 security deposit, paid on July 10, 2010.

The parties agreed that they entered into an agreement whereby the landlord forfeited one month's rent as a result of a leak that developed in the roof of the rental premises. As the tenant had already paid rent for September 2010, when the leak occurred, the landlord agreed to forego the rent for October 2010, to compensate the tenant for the inconvenience he encountered as a result of this problem. There was no agreement between the parties for any additional reimbursement or reduction in rent for the tenant.

Both parties agreed that the tenant did not pay any rent for November 2010. The tenant asked the landlord to negotiate additional compensation for these premises which the tenant maintained were unfit for human habitation as a result of the leak in the roof. The landlord said that the premises were dried out well before November 1, 2010 and a tarp was placed over the roof to protect the rental property from the elements. Repairs are planned shortly. The landlord presented evidence from the company that assisted with drying out the rental unit and assessing the roof damage. The landlord's husband, who testified at the hearing, testified that there was no basis for the tenant's assertion that mould, smells, and bugs rendered the rental premises uninhabitable.

The landlord submitted photographic and written evidence to support her claim regarding the condition of the rental premises. The tenant provided only oral testimony.

Analysis

I find that the tenant did not pay the rent established in the residential tenancy agreement for November 2010. He vacated the rental premises shortly after receiving the landlord's 10 Day Notice to End Tenancy without applying for a cancellation of that notice and without making any payment towards his November 2010 rent. He did not apply for dispute resolution to obtain a reduction in his rent for that month. The tenant

has made no application of his own to seek a reduction in rent for portions of his now ended tenancy.

Based on the undisputed evidence regarding the tenant's non-payment of rent for November 2010, I issue a monetary award in the landlord's favour for the unpaid \$1,325.00 in rent for November 2010.

I allow the landlord to retain the tenant's security deposit plus interest in partial satisfaction of this monetary award. No interest is payable over this period. I allow the landlord to recover her filing fee for this application from the tenant.

Conclusion

I issue a monetary Order in the landlord's favour in the following terms which allows the landlord to retain the tenant's security deposit and to recover her filing fee.

Item	Amount
Unpaid November 2010 Rent	\$1,325.00
Less Security Deposit	-662.50
Recovery of Filing Fee for this application	50.00
Total Monetary Order	\$712.50

The landlord is provided with these Orders in the above terms and the tenant must be served with a copy of these Orders as soon as possible. Should the tenant fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders of that Court.