

DECISION

Dispute Codes OPR, MNR, MNSD, FF

Introduction

This hearing dealt with the landlord's application 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.

The tenants did not attend this hearing. The landlord attended the hearing and was given a full opportunity to be heard, to present evidence and to make submissions. The landlord testified that he posted a 10 Day Notice to End Tenancy for Unpaid Rent of \$850.00 on the tenant's door on December 4, 2010. The landlord testified that he sent the tenants a copy of the dispute resolution hearing package by registered mail on December 17, 2010. He provided a Canada Post Tracking Number to confirm this mailing and testified that the male tenant signed for this package at 10:52 a.m. on January 18, 2011. I am satisfied that these documents were served to the tenants in accordance with the *Act*.

The landlord said that the tenants vacated the rental unit at some point in mid-December 2010. The landlord withdrew his application for an Order of Possession.

Issues(s) to be Decided

Is the landlord entitled to a monetary award for unpaid rent? Is the landlord entitled to retain all or a portion of the tenants' security deposit in partial satisfaction of the monetary award requested? Is the landlord entitled to recover the filing fee for this application?

Background and Evidence

The landlord testified that this one-year fixed term tenancy commenced on May 1, 2010. Monthly rent was set at \$850.00, payable on the first of each month. The landlord continues to hold the tenants' \$425.00 security deposit paid on April 15, 2010.

The landlord provided a copy of the joint move-in condition inspection report signed by the tenant and landlord on May 1, 2010 and the move-out condition inspection report he prepared after the tenants vacated the rental unit. The tenants did not participate in this move-out inspection. The landlord said that he sent the tenants a copy of his move-out report.

The landlord applied for a monetary award of \$850.00 for unpaid rent for each of December 2010 and January 2011, plus a late fee of \$50.00 for each of these months. He said that the rental unit needed cleaning and he needed to remove debris left by the tenants. He said that he could not advertise the premises for rent until early January 2011. He said that he has now re-rented the rental unit to a new tenant for a monthly rent of \$850.00 as of February 1, 2011. He said that he obtained this rental through listing the unit on Craigslist, the method of rental for this property in the past. In addition to the \$1,800.00 in unpaid rent, the landlord requested an additional \$542.50 for cleaning the rental unit for a total monetary award of \$2,342.50, plus the return of the \$50.00 filing fee.

Analysis

I am satisfied by the landlord's undisputed evidence that he is entitled to a monetary award for \$1,800.00 in unpaid rent owing from December 2010 and January 2011 plus the \$100.00 in late fees that result from the non-payment of this rent. These late fees are established in this Residential Tenancy Agreement. I am satisfied that the landlord's successful advertising of the rental suite for February 1, 2011 has discharged his responsibility under section 7(2) of the *Act* to mitigate the tenants' losses. I grant the landlord a monetary award of \$1,900.00 for these rent-related items.

Although the landlord has submitted photographs and receipts to document the costs of cleaning and preparing this rental unit for rental to the next tenant, the only category of monetary award he identified in his application for a monetary award was for unpaid rent and utilities. He did not provide Details of the Dispute in his application. From the landlord's application for dispute resolution, I am not satisfied that the tenants have been given adequate notice that the landlord was seeking a monetary award for damage to the rental unit in addition to his stated claim for loss of rent. I find that the only type of monetary award I can consider in this application is for the unpaid rent or utilities noted in the landlord's application. The landlord is at liberty to reapply for non-rent related losses arising out of this tenancy.

I allow the landlord to retain the tenants' security deposit plus interest in partial satisfaction of the monetary award. No interest is payable over this period.

Since the landlord has been successful in his application, I allow the landlord to recover his \$50.00 filing fee for this application from the tenants.

Conclusion

I issue a monetary Order in the landlord's favour in the following terms which enables the landlord to recover unpaid rent and late fees resulting from the non-payment of rent, to recover the filing for this application, and to retain the tenants' security deposit.

Item	Amount
Unpaid December 2010 Rent	\$850.00
Late Fee – December 2010	50.00
Unpaid January 2011 Rent	850.00
Late Fee – January 2011	50.00
Less Security Deposit	-425.00
Recovery of Filing Fee for this application	50.00
Total Monetary Order	\$1,425.00

The landlord is provided with these Orders in the above terms and the tenant(s) must be served with a copy of these Orders as soon as possible. Should the tenant(s) 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.

As the landlord's application for damage or loss arising out of this tenancy was not before me, I make no decision on that element of the landlord's evidence. The landlord has leave to reapply for a monetary award for damage or loss arising out of this tenancy.

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*.