



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes – OPR, MNR, MNSD, MNDC, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord for an order of possession and a monetary order.

The landlord testified that on February 7, 2011 the landlord served the tenant with the notice of this hearing via registered mail. Section 90 of the *Act* states a document sent by mail is deemed served on the 5th day after it is mailed.

Based on this testimony, I find that the tenant has been served with the Dispute Resolution Direct Request Proceeding documents.

At the outset of the hearing the landlord testified that the tenant moved out of the rental unit on Sunday, February 13, 2011 and that there is no longer a need for an order of possession. I have amended the landlord's application to exclude the matter of the order of possession.

Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to; to a monetary order for unpaid rent; for carpet cleaning and general cleaning; for all or part of the security deposit and to recover the filing fee from the tenant for the cost of the Application for Dispute Resolution, pursuant to Sections 38, 46, 55, 67, and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The landlord submitted the following evidentiary material:

- A copy of a residential tenancy agreement which was signed by the parties on August 12, 2010 for a 7 month fixed term tenancy beginning on September 1, 2010 for the monthly rent of \$975.00 due on the 1st of each month and a security deposit of \$487.50 was paid. The tenancy agreement also contains a clause allowing the landlord to charge fees for late rent payments and for bank charges for returned rent cheques; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent that was issued on January 5, 2011 with an effective vacancy date of January 18, 2011 due to \$2,050.00 in unpaid rent.

Documentary evidence and testimony filed by the landlord indicates that the tenant failed to pay the full rent owed for the months of December 2010 and January and February 2011.

The Notice states that the tenant had five days to pay the rent or apply for Dispute Resolution or the tenancy would end. The tenant did not apply to dispute the Notice to End Tenancy within five days.

The landlord testified the tenant has made not payments on any rent owed. The landlord seeks compensation for 3 months rent; 3 months of late payment charges and 1 charge for a returned cheque from a financial institution. The landlord also seeks compensation for cleaning and carpet cleaning.

Analysis

I have reviewed all documentary evidence and accept, in the absence of any testimony or evidence to the contrary that the tenant has failed to pay the landlord as noted above. Section 26 requires payment of rent on the day it is due according to the tenancy agreement.

In relation to the landlord's application for compensation for cleaning and carpet cleaning, as the application was made prior to the tenant vacating the rental unit, I find the landlord's application to be premature and dismiss this portion with leave to reapply.

Conclusion

I find that the landlord is entitled to monetary compensation pursuant to Section 67 in the amount of **\$3,055.00** comprised of \$2,925.00 rent owed; \$60.00 late charges; \$20.00 returned cheque charge and the \$50.00 fee paid by the landlord for this application.

I order the landlord may deduct the security deposit and interest held in the amount of \$487.50 in partial satisfaction of this claim. I grant a monetary order in the amount of **\$2,567.50**. This order must be served on the tenant and may be filed in the Provincial Court (Small Claims) and enforced 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: February 17, 2011.

Residential Tenancy Branch