



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes OPR, MNR, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord to obtain an Order of Possession, a Monetary Order for unpaid rent and to recover the cost of the filing fee. At the outset of the hearing the landlords' agent confirmed that the tenant has moved out and they withdraw their 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*, sent via registered mail on March 22, 2011. The tenant is deemed to be served these documents the fifth day after they were mailed as per section 90(a) of the *Act*.

The landlords agent appeared, gave affirmed testimony, was provided the opportunity to present her evidence orally, in writing, and in documentary form. 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

- Is the landlord entitled to a Monetary Order to recover unpaid rent?

Background and Evidence

This tenancy started on December 01, 2010. This was a fixed term tenancy which was due to expire on May 31, 2011. Rent for this unit was \$1,125.00 per month due on the 1st of each month.

The landlords' agent testifies that the tenant did not pay rent for March, 2011. The landlord issued a 10 Day Notice to End Tenancy for unpaid rent on March 09, 2011. This was posted on the tenants' door. The tenant had five days to either pay the outstanding rent or apply for Dispute Resolution or the tenancy would end on March 19, 2011. The tenant did not pay the outstanding rent or dispute the Notice but did move from the rental unit on or about March 23, 2011. The landlord is seeking a Monetary Order for rent arrears for March, 2011 to the sum of \$1,125.00. The landlord also seeks to recover late fees for March of \$20.00 as documented in the tenancy agreement.

The landlord testifies that the tenant has caused a lot of damage in the rental unit with what appears to be axe holes in seven walls, all the doors and a shattered shower screen. The landlord testifies that they have had to repair the rental unit and have been unable to re-rent it for April, 2011. The landlords' agent states they have been able to show prospective tenants a comparable unit in the building but as of today's date the unit remains empty. The repair work was completed the weekend of April 09/10 and the unit is now available to rent. The landlord seeks to recover rent for April, 2011 of \$1,125.00.

Analysis

The tenant did not appear at the hearing to dispute the landlords claims, despite having been given a Notice of the hearing; therefore, in the absence of any evidence from the tenant, I have carefully considered the landlords documentary evidence and affirmed testimony before me. Section 26 of the *Act* states that rent must be paid on the day it is due. In this case rent was due on the first of each month and the tenant failed to pay rent for March, 2011. Therefore, I find that the landlord is entitled to recover rent arrears of **\$1,125.00** pursuant to s. 67 of the *Act*.

The landlord is also entitled to claim **\$20.00** for late fees for March as stated in the tenancy agreement and this sum will be included in a Monetary Order pursuant to s. 67 of the *Act*.

With regard to the landlords claim, for unpaid rent for April, 2011; I accept the landlords' undisputed testimony that the tenant caused damage to the unit which prevented them from being able to re-rent the unit for April 01, 2011. However as we are only at April 11, 2011 for this hearing I find the landlords claim to recover a loss of rental income for the whole of April is

premature. I do find however the landlord is entitled to recover unpaid rent up to April 11, 2011 to the sum of **\$412.50** (\$37.50 per day for 11 days) pursuant to s. 67 of the *Act*.

As the landlord has been partially successful in this matter, she is also entitled to recover the **\$50.00** filing fee for this proceeding pursuant to s. 72(1) of the *Act*.

The landlord will receive a monetary order for the balance owing as follows:

Outstanding rent for March	\$1,125.00
Late fees	\$20.00
Subtotal	\$1,557.50
Plus filing fee	\$50.00
Total amount due to the landlord	\$1,607.50

Conclusion

I HEREBY FIND in partial favor of the landlord's monetary claim. A copy of the landlord's decision will be accompanied by a Monetary Order for **\$1,607.50**. The order must be served on the tenant and is enforceable through the Provincial Court as an order of that Court.

The landlord is at liberty to reapply for the reminder of rent for April, 2011 in the event the unit remains unrented during April, 2011.

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: April 11, 2011.

Residential Tenancy Branch