



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

OPR, MNR, MNDC, MNSD, FF

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the Act) for:

- an order of possession for unpaid rent pursuant to section 55;
- a monetary order for unpaid rent and for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement 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 her filing fee for this application from the tenant pursuant to section 72.

The landlord attended the hearing by conference call and provided undisputed affirmed evidence. The tenants did not attend or submit any documentary evidence. The landlord stated that the tenants were personally served with the notice of hearing package and the submitted documentary evidence on January 29, 2016. The landlord's witness, B.T. provided direct testimony confirming service on January 29, 2016 in person at the rental premises. I accept the undisputed affirmed testimony of the landlord and find that the tenants were properly served with the notice of hearing package and the submitted documentary evidence as per sections 88 and 89 of the Act. The tenants are deemed served with the package on January 29, 2016 as per section 90 of the Act.

Preliminary Issue(s)

The landlord clarified at the outset that the tenants had vacated the rental unit sometime in February 2016 without notice. The landlord stated that an order of possession is no longer required and as such withdraws this portion of their claim.

Issue(s) to be Decided

Is the landlord entitled to a monetary order for unpaid rent and recovery of the filing fee?

Is the landlord entitled to retain all or part of the security deposit?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

The landlord provided undisputed affirmed testimony that there was a signed tenancy agreement in which the tenancy began on March 1, 2015 on a month-to-month basis. The monthly rent was \$975.00 payable on the 1st day of each month and a security deposit of \$487.50 was paid.

The landlord provided undisputed affirmed testimony that the tenants were served with the 10 Day Notice dated December 4, 2015 in person on December 4, 2015. The landlord has submitted a copy of a proof of service document showing that the tenant, D.B. signed in receipt of the 10 Day Notice. The 10 Day Notice stated that the tenant failed to pay rent of \$975.00 that was due on December 1, 2015 and an effective end of tenancy date of December 14, 2015.

The landlord seeks a monetary order for \$2,925.00 which consists of:

\$975.00	Unpaid Rent December 2015
\$975.00	Unpaid Rent January 2016
\$975.00	Unpaid Rent February 2016

The landlord also seeks to retain the \$487.50 security deposit and recovery of the \$100.00 filing fee.

Analysis

Section 67 of the Act provides that, where an arbitrator has found that damages or loss results from a party not complying with the Act, an arbitrator may determine the amount of damages or loss and order the wrongdoer to pay compensation to the claimant. The claimant bears the burden of proof. The claimant must show the existence of the damage or loss, and that it stemmed directly from a violation of the agreement or a contravention of the Act by the wrongdoer. If this is established, the claimant must provide evidence of the monetary amount of the damage or loss.

I find based upon the undisputed affirmed testimony of the landlord that a claim for unpaid rent of \$2,925.00 has been established. The landlord provided details based upon the 10 Day Notice dated December 4, 2015 that the tenants failed to pay rent of \$975.00 for December 2015. The landlord also stated that since being served with the 10 Day Notice the tenants failed to pay any rent until they vacated the rental premises sometime in February 2016.

The landlord applied to keep the tenant's security deposit. I allow the landlord to retain the security deposit in partial satisfaction of the monetary award. No interest is payable over this period.

As the landlord was successful in this application, I find that the landlord is entitled to recover the \$100.00 filing fee paid for this application.

Conclusion

I issue a monetary order in the landlord's favour in the amount of \$2,537.50 under the following terms:

Item	Amount
Unpaid December 2015 Rent	\$975.00
Unpaid January 2016 Rent	975.00
Unpaid February 2016 Rent	975.00
Offset Security Deposit	-487.50
Recovery of Filing Fee	100.00
Total Monetary Order	\$2537.50

The landlord is provided with this order in the above terms and the tenant(s) must be served with this order as soon as possible. Should the tenant(s) fail to comply with this order, this order may be filed in the Small Claims Division of the Provincial Court and enforced as orders 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: March 11, 2016

Residential Tenancy Branch

