



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNDC; FF

Introduction

This is the Tenant's application for compensation for damage or loss under the Act, Regulation or tenancy agreement; and to recover the cost of the filing fee from the Landlord.

The parties gave affirmed testimony at the Hearing.

Issues to be Decided

- Is the Tenant entitled to compensation for damage or loss pursuant to the provisions of Section 67 of the Act?

Background and Evidence

The Tenant testified that he paid \$25.00 more than he should have paid in December, 2011, because he paid for his roommate's parking charge. He stated that his roommate had moved out and that the Tenant signed a new tenancy agreement on January 1, 2012. The Tenant testified that he had no use for the parking spot and had an oral agreement with the Landlord's previous property manager that \$25.00 would be credited towards January's rent in recognition that the Tenant had overpaid in December.

The Tenant testified that he pays rent by preauthorized deduction from his bank account. He stated that rent is currently \$1,300.00, so he expected \$1,275.00 to come out of his account for January's rent payment, but the Landlord attempted to withdraw \$1,300.00. The Tenant stated that the bank did not honour the withdrawal because the Tenant only had \$1,275.00 in his account. The Tenant testified that the same thing happened in February.

The Tenant seeks to compensation, as follows:

Recovery of \$25.00 parking fee overpayment for December, 2011	\$25.00
Fees charged to the Tenant by his bank for NSF	\$42.50
Fees charged by the Landlord for late fees and NSF for February rent	\$50.00

Bank charge for cost of money order	<u>\$8.50</u>
TOTAL	\$126.00

The Landlord's agent testified that she is the new property manager for the Landlord and that the previous property manager had been fired because of his lack of record keeping abilities. She stated that she was unaware of any agreement between the old property manager and the Tenant with respect to the parking fee for December, 2011.

The Landlord's agent stated that the Tenant did not overpay for the month of December, 2011. She testified that the Tenant's roommate gave his notice on November 26, 2011, which was insufficient notice to end the tenancy on November 30, 2011.

The Landlord's agent testified that the roommate's tenancy agreement stipulated that the roommate paid \$1,300.00 per month rent and \$25.00 a month for parking. She stated that the Tenant signed a new 6 month fixed term lease agreement on January 1, 2012, for rent in the amount of \$1,300.00 and no parking fee.

In evidence, both parties provided a copy of the tenancy agreement signed January 1, 2012. The Landlord also provided a copy of the Tenant's Direct Payment Authorization.

Analysis

The Landlord's agent testified that she was not party to any agreement between the previous building manager and the Tenant. She stated that the previous manager had been fired for loose bookkeeping practices and that she had no knowledge whether or not an agreement was made between the previous property manager and the Tenant with respect to December's parking fee. The Tenant testified that he and the building manager had an agreement that the parking fees would not be charged for December because the Tenant did not use the parking space. Parking fees are not "rent".

There was insufficient evidence that the Tenant had a tenancy agreement with the Landlord prior to December, 2011. The copy of the Tenant's authorization for direct payment, which was signed on November 25, 2011, indicates that the Tenant authorized a "fixed amount of \$1,300.00" to be withdrawn effective January 1, 2012. Based on the testimony of both parties and the documentary evidence provided I find it likely, on the balance of probabilities, that the Tenant and the former property manager had an agreement that the Tenant would not pay parking for the month of December, 2011 and that the Tenant would be charged less for January's rent in order to repay the overpayment. I find that the Tenant is entitled to recover the overpayment in the amount of **\$25.00** from the Landlord.

I dismiss the remainder of the Tenant's application for the following reasons:

1. The Tenant authorized \$1,300.00 to be withdrawn from his account on the first of each month after January 1, 2012, and I find that a prudent person would have ensured that \$1,300.00 was in his account on January 1, 2012, to cover the automatic withdrawal until the overpayment was sorted out.
2. The Tenant knew that the authorized payment did not go through in January and yet did not ensure that there were sufficient funds in his account for February to allow the automatic withdrawal to go through, nor did he authorize the bank to stop the automatic withdrawal for February 1, 2012.
3. Section 7 of the regulations allows a landlord administration fees in the amount of \$25.00 for late fees and for insufficient funds. There is a clause in the tenancy agreement allowing for such fees.
4. The Tenant did not provide evidence that he paid \$8.50 for the cost of a money order, or what the money order was for.

The Tenant has been partially successful in his application and I find that he is entitled to recover the cost of the filing fee from the Landlord, in the amount of **\$50.00**.

Pursuant to the provisions of Section 72 of the Act, the Tenant may deduct his monetary award in the total amount of **\$75.00** from future rent due to the Landlord.

Conclusion

I find that the Tenant is entitled to a monetary award in the amount of **\$75.00**. The Tenant may deduct **\$75.00** from future rent due to the Landlord.

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 26, 2012.

Residential Tenancy Branch