



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding COMPLETE RESIDENTIAL PROEPRTY MANAGEMENT LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNR, MNSD, MNDC, FF

Introduction

This hearing dealt with a landlord's application for a Monetary Order for unpaid rent; damage or loss under the Act, regulations or tenancy agreement; and, authorization to retain the security deposit and interest. Both parties appeared or were represented at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

Issue(s) to be Decided

1. Is the landlord entitled to recover the amounts claimed against the tenant for unpaid rent, parking, late fees and cleaning costs?
2. Is the landlord authorized to retain the security deposit and interest in partial satisfaction of the amounts claimed?

Background and Evidence

The tenancy commenced October 23, 2003 and the tenant paid a security deposit of \$550.00. Pursuant to several rent increases over the years, the monthly rent was \$1,407.00 at the end of the tenancy, plus parking of \$5.00 per month. The tenancy agreement provides two clauses that deal with late fees: 8 and 37. Clause 8 stipulates a charge of up to \$20.00 will be applied for each late payment or NSF cheque. Clause 37 provides for late and NSF charges of \$40.00 each plus \$5.00 per day.

The tenant failed to pay rent and parking for February, March and April 2013 when due but did make two partial payments. The landlord issued a 10 Day Notice to End Tenancy on April 2, 2013 and the tenant vacated the rental unit May 1, 2013.

The tenant and landlord participated in move-in and move-out inspections together and the landlord prepared inspection reports.

The landlord is seeking to recover \$3,149.00 from the tenant, comprised of:

Unpaid rent, parking and late fees for Jan – March 2013	\$2,849.00
Cleaning costs	<u>300.00</u>
Total claim	\$3,149.00

The landlord requested authorization to retain the security deposit of \$550.00 and accrued interest of \$19.47 in partial satisfaction of the amounts owed to the landlord.

As supporting documentation, the landlord provided copies of: the tenancy agreement, ledger, condition inspection reports, and various correspondence between the parties.

The tenant indicated he had an opportunity to review the landlord's supporting evidence and did not disagree with any of the landlord's claims.

Analysis

Upon consideration of everything presented to me, I provide the following findings and reasons.

A tenant is required to pay rent when due under their tenancy agreement in the amount stipulated by the tenancy agreement or as provided under the Act. In this case, I accept the undisputed evidence that the monthly rent was \$1,407.00 and the tenant failed to pay it for the month of February, March and April 2013 except for two partial payments.

I also accept the undisputed evidence that the tenant was required to pay parking fees of \$5.00 per month and failed to do so for the months of February, March and April 2013.

With respect to late fees, I find clause 37 of the tenancy agreement is non-compliant with the Residential Tenancy Regulations as it is subject to going over the limitations imposed by the regulations. Thus, clause 37 is unenforceable.

I am satisfied that clause 8 of the tenancy agreement is compliant with the Regulations and that late fees are limited to \$20.00 each as agreed upon. In this case, the landlord applied a \$25.00 late fee to the month of February 2013 but did not charge a late fee for the months of March and April 2013 even though it was legally entitled to so. I grant the landlord's request to recover \$25.00 in late fees when I consider this claim is less than the \$60.00 in late fees it could have charged for these three months.

As the tenant agreed to compensate the landlord \$300.00 for cleaning I grant this amount to the landlord.

In light of the above, I grant the landlord's claims against the tenant in its totality. I also award the \$50.00 filing fee to the landlord and I authorize the landlord to retain the tenant's security deposit and interest in partial satisfaction of the amounts awarded to the landlord.

The landlord is provided a Monetary Order calculated as follows:

Amount claimed by landlord as requested	\$3,149.00
Filing fee paid for this Application	50.00
Less: security deposit and interest	<u>569.47</u>
Monetary Order	\$2,629.53

To enforce the Monetary Order it must be served upon the tenant and it may be filed in Provincial Court (Small Claims) to enforce as an Order of the court.

Conclusion

The landlord has been authorized to retain the tenant's security deposit and interest and has been provided a Monetary Order for the balance of \$2,629.53 to serve and enforce as necessary.

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: July 09, 2013

Residential Tenancy Branch

