



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Port Royal Village Dev. Inc.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNR FF

Introduction

This hearing dealt with an Application for Dispute Resolution under the *Residential Tenancy Act* (the “Act”) by the landlord for a monetary order for unpaid rent or utilities, and to recover the cost of the filing fee.

A property manager and a resident manager appeared as agents for the landlord at the teleconference hearing and gave affirmed testimony. During the hearing the agents were given the opportunity to provide their evidence orally. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

As the tenants did not attend the hearing, service of the Notice of a Dispute Resolution Hearing (the “Notice of Hearing”) was considered. The agents testified that the tenants were served the Notice of Hearing and original evidence package personally at the rental unit on March 26, 2013 and was witnessed by agent LD’s spouse, MD. The agent testified that additional evidence was mailed to the tenants via registered mail on June 12, 2013, however, that additional evidence package was excluded from the hearing as it was served late to the Residential Tenancy Branch. I find the tenants were served with the Notice of Hearing and original evidence package in accordance with the *Act*.

Preliminary and Procedural Matter

The agents stated that they originally applied to retain the tenants’ security deposit, however later crossed that off their application in error. During the hearing, the agents requested permission to have their application amended to include their original request for authority to retain the tenants’ security deposit. As the original application clearly has that portion checked off on the original application, I grant the agents request to include a request for authority to retain the tenants’ security deposit pursuant to section 64(3) of the *Act*.

Issues to be Decided

- Is the landlord entitled to a monetary order under the *Act*?
- What should happen to the tenants' security deposit under the *Act*?

Background and Evidence

A fixed term tenancy agreement began on February 1, 2013 and was to revert to a month to month tenancy after January 31, 2014. Monthly rent in the amount of \$1,395.00 was due on the first day of each month. A security deposit of \$697.50 was paid by the tenants at the start of the tenancy which the landlord continues to hold.

The agents stated that the cheque issued by the tenants for March 2013 rent in the amount of \$1,395.00 was returned from the bank as "NSF" (Non-Sufficient Funds). Section 19 of the tenancy agreement addendum indicates that NSF fees of \$50.00 and late fees of \$25.00 will be applied to all cheques returned as "NSF" and where rent has been paid late.

The agents confirmed service of the 10 Day Notice for Unpaid Rent or Utilities (the "10 Day Notice"), by posting on the tenants' door on March 6, 2013 for \$1,470 which is comprised of \$1,395.00 for unpaid March 2013 rent, \$50.00 for the NSF fee and \$25.00 for the late fee. Pursuant to section 90 of the *Act*, the tenants were deemed served 3 days later on March 9, 2013. The effective vacancy date on the 10 Day Notice is listed as March 16, 2013. The tenants did not pay rent or dispute the 10 Day Notice within 5 days of the deemed service date of March 9, 2013.

The agents testified that the tenants owe \$1,470.00 comprised of \$1,395.00 for unpaid rent for March 2013, \$50.00 for the NSF fee for the tenants' cheque for March 2013 that was returned as "NSF", plus the \$25.00 late fee, in accordance with section 19 of the tenancy agreement addendum.

A move-in condition inspection was completed according to the agents. The tenants vacated the rental unit on March 25, 2013. The landlord filed their application on March 25, 2013.

The landlord submitted a copy of the tenancy agreement, and the tenancy agreement addendum in evidence.

Analysis

Based on the documentary evidence and the undisputed testimony of the agents provided during the hearing, and on the balance of probabilities, I find the following.

Claim for unpaid rent – The agents testified that \$1,395.00 remains unpaid for March 2013 rent, plus \$50.00 for an “NSF” fee and \$25.00 for a late fee. Pursuant to section 26 of the *Act* a tenant must pay rent when it is due in accordance with the tenancy agreement. Based on the above, **I find** that the tenants have failed to comply with a standard term of the tenancy agreement which stipulates that rent is due monthly on the first of each month.

I find the landlord has met the burden of proof and has established a monetary claim of **\$1,470.00** comprised of \$1,395.00 plus \$50.00 for an “NSF” fee and \$25.00 for a late fee.

As the landlord has succeeded with their application, **I grant** the landlord the recovery of the **\$50.00** filing fee.

The tenants’ security deposit of \$697.50 has accrued \$0.00 in interest since the start of the tenancy.

Monetary Order – I find that the landlord is entitled to a monetary claim and that this claim meets the criteria under section 72(2)(b) of the *Act* to be offset against the tenants’ security deposit plus interest as follows:

Unpaid March 2013 rent	\$1,395.00
March 2013 NSF fee	\$50.00
March 2013 late fee	\$25.00
Filing fee	\$50.00
Subtotal	\$1,520.00
<i>(Less Tenants’ Security Deposit with \$0.00 interest)</i>	<i>- (\$697.50)</i>
TOTAL OWING TO LANDLORD	\$822.50

Conclusion

I find that the landlord has established a total monetary claim of \$1,520.00. **I authorize** the landlord to retain the tenants’ full security deposit of \$697.50 in partial satisfaction of the claim, and **I grant** the landlord a monetary order under section 67 for the balance

due of **\$822.50**. This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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 03, 2013

Residential Tenancy Branch