



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Wall Financial Corporation
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNR, MNDC, FF

Introduction

This hearing was convened by way of conference call concerning an application made by the landlord for an Order of Possession for unpaid rent or utilities; for a monetary order for unpaid rent or utilities; for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; and to recover the filing fee from the tenants for the cost of the application.

An agent for the landlord company attended the hearing, gave affirmed testimony, and provided evidentiary material prior to the commencement of the hearing. However, despite being served with the Landlord's Application for Dispute Resolution, evidence, and notice of hearing documents by registered mail on January 23, 2014, no one for the tenants attended. The landlord provided a Proof of Service document for each of the 2 named tenants, along with a copy of each of the Registered Mail receipts issued by Canada Post as evidence of such service, and I am satisfied that the tenants have each been served in accordance with the *Residential Tenancy Act*. The line remained open while the phone system was monitored for 10 minutes prior to hearing any testimony, and the only participant who joined the call during this time was the landlord's agent.

All evidence and testimony provided has been reviewed and is considered in this Decision.

During the course of the hearing, the landlord advised that the tenants have vacated the rental unit, and as such, the landlord withdraws the claim for an Order of Possession and reduces the monetary claim accordingly.

Issue(s) to be Decided

- Has the landlord established a monetary claim as against the tenants for unpaid rent or utilities?

- Has the landlord established a monetary claim as against the tenants for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement and more specifically for late fees?

Background and Evidence

The landlord's agent testified that this fixed term tenancy began on July 1, 2013, expired on December 31, 2013 and then reverted to a month-to-month tenancy, which ultimately ended on or about January 28, 2014. Rent in the amount of \$835.00 per month was payable in advance on the 1st day of each month. On May 29, 2013 the landlord collected a security deposit from the tenants in the amount of \$417.50, and a pet damage deposit of \$200.00 was collected by the landlord on July 1, 2013. Both deposits are currently held in trust by the landlord, and a copy of the tenancy agreement has been provided. Both tenants are named as parties to the agreement and it appears to be signed by both tenants and an agent for the landlord on May 29, 2013.

The tenants failed to pay rent when it was due for the month of January, 2014 and the landlord caused the tenants to be served with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities on January 2, 2014 by posting it to the door of the rental unit. A copy of the notice has been provided for this hearing, and it is dated January 2, 2014 and states that the tenants failed to pay rent in the amount of \$417.50 that was due on January 1, 2014 and contains an expected date of vacancy of January 15, 2014. The landlord's agent testified that the tenants did not pay the rent and did not dispute the notice, but did not vacate the rental unit until on or about January 28, 2014. The landlord claims \$417.50 for unpaid rent.

The landlord's agent further testified that the tenancy agreement provides for a \$20.00 late fee for rent paid after the 1st day of each month. The tenancy agreement states: "Late payments are subject to a charge of \$20.00, in addition, each returned cheque (including N.S.F.) is subject to a charge of \$25.00." The landlord claims \$20.00 for a late fee for rent for the month of January, 2014.

The landlord's agent further testified that the tenants were given 2 opportunities to complete a move-out condition inspection, but neither tenant showed up. The tenants have not provided the landlord with a forwarding address.

The rental unit was re-rented for February 1, 2014 and therefore the landlord withdraws the claim in the application for dispute resolution for rent and late fees for the months of February and March, 2014.

The landlord also claims the \$50.00 filing fee for the cost of the application and asks that the amounts be set off from the security deposit and pet damage deposit currently held in trust.

Analysis

In the absence of any evidence or testimony to the contrary, and considering the testimony and evidentiary material provided by the landlord, I am satisfied that the landlord has established a monetary claim as against the tenants for unpaid rent for the month of January, 2014 in the amount of \$417.50. The amount and the dates are consistent with the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, and I accept the testimony of the landlord's agent that the rental unit was re-rented for February 1, 2014.

I am also satisfied that the landlord has established a late rent fee of \$20.00 as contained in the tenancy agreement. Further, the regulations to the *Residential Tenancy Act* state that where it is specified in a tenancy agreement, a landlord may charge an administration fee of not more than \$25.00 for the return of a tenant's cheque by a financial institution or for late payment of rent. In this case, I find that the tenancy agreement specifies a fee of \$20.00 for late payment of rent. Having found that the tenants owe some money for January's rent, I also find that the landlord is entitled to the \$20.00 claim.

Since the landlord has been partially successful with the application, the landlord is also entitled to recovery of the \$50.00 filing fee for the cost of the application.

With respect to the security deposit and the pet damage deposit, the landlord has not applied to keep it. In the administration of justice, the tenants ought to be put on notice for such an application. The *Act* requires a landlord to return the deposits in full or make an application to keep them (for a monetary claim against the tenant) within 15 days of the later of the date the tenancy ends or the date the landlord receives the tenant's forwarding address in writing. In this case, I accept the testimony of the landlord's agent that the tenancy ended on January 28, 2014 and the landlord has not received the tenants' forwarding address at all. The *Act* also states that if a tenant does not provide a forwarding address in writing to the landlord within one year of the end of the tenancy, the landlord need not return the deposits and the tenant's right to claim them is extinguished.

The *Act* also specifies that if I order a party to a dispute resolution proceeding to pay any amount to the other, the amount may be deducted, in the case of payment from a tenant to a landlord, from any security deposit or pet damage deposit due to the tenant.

Considering the finding that the landlord has not received a forwarding address, I find that it would be prudent to make an order that the landlord retain the awards for \$417.50 of unpaid rent, \$20.00 for a late fee, and recovery of the \$50.00 filing fee from the security deposit and pet damage deposit currently held in trust.

Conclusion

For the reasons set out above, the landlord's application for an Order of Possession is hereby dismissed as withdrawn.

I hereby award the sum of \$487.50 in favour of the landlord pursuant to Section 67 of the *Residential Tenancy Act*, and I order the landlord retain that amount from the security deposit and pet damage deposit currently held in trust.

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, 2014

Residential Tenancy Branch

