



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding IMPERIAL HOSPITALITY GROUP INC.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

For the tenant: MNDC MNSD
For the landlord: MNR MNSD FF

Introduction

This hearing was convened as a result of the cross applications of the parties for dispute resolution under the *Residential Tenancy Act* (the “Act”).

The tenant applied for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and for the return of all or part of the security deposit or pet damage deposit.

The landlord applied for a monetary order for unpaid rent or utilities, to keep all or part of the security deposit or pet damage deposit, and to recover the filing fee.

An agent for the landlord (the “agent”) and the owner of the named landlord company (the “owner”) attended the hearing. The tenant did not attend the hearing. As the tenant did not attend the teleconference hearing to present the merits of his application, the tenant’s application was **dismissed, without leave to reapply**, after the 10 minute waiting period had elapsed. The hearing continued with consideration of the landlord’s application.

The hearing process was explained to the agent and owner, and they were given an opportunity was to ask questions about the hearing process. Thereafter the agent and owner gave affirmed testimony, were provided the opportunity to present their relevant evidence orally and in documentary form prior to the hearing, and make submissions to me. I have reviewed all evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

The agent testified that the tenant was served via registered mail on December 27, 2013 with the Notice of Hearing and landlord's evidence to the forwarding address provided by the tenant, which was left on the landlord's voicemail on December 26, 2013, and not in writing. The agent stated that the Notice of Hearing and evidence were mailed via registered mail and a registered mail tracking number was submitted in evidence. The agent stated that the package was returned as "unclaimed". Section 90 of the *Act* indicates that documents served by registered mail are deemed served five days after they are mailed. Based on the above, I accept that the tenant was deemed served with the Notice of Hearing and landlord's evidence as of January 1, 2014.

Issues to be Decided

- Is the landlord entitled to a monetary order under the *Act*, and if so, in what amount?
- What should happen to the tenant's security deposit under the *Act*?

Background and Evidence

A copy of the tenancy agreement was submitted in evidence. A fixed term tenancy agreement began on April 1, 2013 and reverted to a month to month tenancy after July 1, 2013. Monthly rent in the amount of \$700.00 was due on the first day of each month. A security deposit of \$350.00 was paid by the tenant at the start of the tenancy, which the landlord continues to hold.

The agent testified that the tenant was served with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "10 Day Notice") dated October 21, 2013 and served the 10 Day Notice personally on the tenant on October 21, 2013. The agent stated that the tenant did not dispute the 10 Day Notice and failed to pay \$50.00 of the \$650.00 rent owing for October 2013. The agent stated that the tenant failed to pay any rent for November 2013 or December 2013 and then vacated the rental on December 2, 2013, without notice by abandoning the rental unit. The effective vacancy date listed on the 10 Day Notice was October 31, 2013.

The landlord is seeking \$1,650.00 comprised of the following:

Item 1. Unpaid portion of October 2013 rent	\$50.00
Item 2. Unpaid rent for November 2013	\$700.00
Item 3. Unpaid rent for December 2013	\$700.00
Item 4. Six late fees for the months of June, August, September,	\$150.00

October, November and December of 2013 @ \$25.00 per late fee	
Item 5. Recovery of filing fee	\$50.00
TOTAL	\$1,650.00

The agent stated that they determined that the tenant abandoned the rental unit based on security camera video footage showing the tenant moving out on December 2, 2013. The security camera footage was not submitted in evidence.

The agent testified that the tenant failed to provide his forwarding in writing as required by the *Act*; however, did leave his forwarding address on the landlord's voicemail on December 26, 2013. The next day, December 27, 2013, the landlord filed their application using that address provided by the tenant on the landlord's voicemail.

On page three of the tenancy agreement, term #4, indicates that a fee of \$25.00 will apply to all late payments of rent. The agent submitted receipts in evidence which support that the tenant was late paying rent as follows:

1. June 1, 2013 rent was paid on June 13, 2013
2. August 1, 2013 rent was paid on August 8, 2013
3. September 1, 2013 rent was paid on September 13, 2013
4. October 1, 2013 rent was not paid in full; however \$650.00 was paid on November 19, 2013, although November 2013 and December 2013 rent were not paid at all.

Analysis

Based on the documentary evidence, the undisputed testimony of the agent and owner, and on the balance of probabilities, I find the following.

Test for damages or loss

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in sections 7 and 67 of the *Act*. Accordingly, an applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;

3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

Landlord's claim for unpaid rent, late fees and the tenant's security deposit - The landlord has claimed \$1,450.00 in unpaid rent comprised of \$50.00 owing for October 2013 rent, \$700.00 owing for November 2013, and \$700.00 owing for December 2013, plus \$150.00 for six late fees at \$25.00 per late fee. The agent stated that the tenant did not dispute the 10 Day Notice dated October 21, 2013 and failed to vacate the rental unit on October 31, 2013, remaining in the rental unit until December 2, 2013. Section 26 of the *Act* states that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with the *Act*.

Based on the undisputed testimony of the agent, **I find** the landlord has met the burden of proof as the tenant breached section 26 of the *Act* by failing to pay \$50.00 of October 2013 rent, \$700.00 of November 2013 and \$700.00 for December 2013 as the tenant remained in the rental unit until December 2, 2013 and rent was due on the first day of the month and that the landlord suffered a loss due to the tenant breaching the *Act*.

I find that the tenant is also responsible for six late fees as claimed by the landlord at \$25.00 for each fee for a total amount of late fees in the amount of **\$150.00** pursuant to term 4 listed on the tenancy agreement.

As the landlord's claim did have merit, **I grant** the landlord the recovery of their filing fee in the amount of **\$50.00**.

The landlord continues to hold the tenant's security deposit of \$350.00, which has accrued no interest since the start of the tenancy.

I find that the landlord has established a total monetary claim of **\$1,650.00** comprised of \$1,450.00 in unpaid rent, \$150.00 for six late fees, plus recovery of the \$50.00 filing fee. **I ORDER** the landlord to retain the tenant's full security deposit of \$350.00 in partial satisfaction of the landlord's claim. **I grant** the landlord a monetary order pursuant to section 67 of the *Act*, for the balance owing by the tenant to the landlord in the amount of **\$1,300.00**. This order must be served on the tenant and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

Conclusion

The application of the tenant has been dismissed in full, without leave to reapply.

The landlord established a total monetary claim of \$1,650.00 and was ordered to retain the tenant's full security deposit of \$350.00 in partial satisfaction of the landlord's claim. The landlord has been granted a monetary order pursuant to section 67 of the *Act*, for the balance owing by the tenant to the landlord in the amount of \$1,300.00. This order must be served on the tenant and 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: March 5, 2014

Residential Tenancy Branch

