



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Middlegate Developments Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNR, MNSD, FF

Introduction

This hearing was convened by way of conference call concerning an application made by the landlord for a monetary order for unpaid rent or utilities, for an order permitting the landlord to keep all or part of the pet damage deposit or security deposit, and to recover the filing fee from the tenant for the cost of the application.

An agent for the landlord company attended the conference call hearing, gave affirmed testimony and provided evidentiary material to the Residential Tenancy Branch and to the tenant prior to the commencement of the hearing. However, despite being served with the Landlord Application for Dispute Resolution and notice of hearing documents by registered mail on January 4, 2014, no one for the tenant attended. The landlord's agent testified that the documents were served on that date and in that manner, and has provided a copy of the registered mail ticket and receipt from Canada Post bearing that date, and I am satisfied that the tenant has 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 other testimony, and the only participant who joined the call was the landlord's agent.

The landlord also testified that the evidence package was served on the tenant in a separate mailing. All evidence and testimony provided has been reviewed and is considered in this Decision.

Issue(s) to be Decided

- Has the landlord established a monetary claim as against the tenant for unpaid rent or utilities?
- Is the landlord entitled to keep all or part of the pet damage deposit or security deposit in full or partial satisfaction of the claim?

Background and Evidence

The landlord's agent testified that this fixed term tenancy began on August 16, 2013 and was to expire after 5 months. Rent in the amount of \$877.00 per month was payable in advance on the last day of each month for the following month. A written tenancy agreement has been provided, and the landlord's agent testified that the tenant was given a pro-rated amount for the first month of the tenancy, and paid rent by way of post-dated cheques. On July 10, 2013 the landlord collected a security deposit from the tenant in the amount of \$438.50 which is still held in trust by the landlord.

The landlord's agent further testified that the tenant gave the landlord short notice to move out of the rental unit. The tenant vacated the rental unit on or about December 15, 2013, and the landlord's agent had promised the tenant that every effort would be made to re-rent the rental unit and that if re-rented, the tenant would be reimbursed an amount for December's rent that would be collected by a new tenant. The rental unit was re-rented commencing December 16, 2013.

However, the rent cheque for the month of December, 2013 given by the tenant was returned by the landlord's financial institution for insufficient funds. A copy of the Returned Item Notice from the landlord's financial institution has been provided. The landlord claims \$32.50 for the returned cheque, but the Returned Item Notice does not indicate any service fee charged to the landlord.

The landlord has also provided a document setting out the landlord's claim, which includes \$70.00 for carpet cleaning, \$42.03 for cleaning drapes, \$72.00 for cleaning the rental unit, a \$25.00 late fee for December's rent, a \$32.50 NSF fee and \$100.00 for liquidated damages. The form shows a set-off of \$425.00 for re-renting the rental unit on December 16, 2013, and after deducting the \$438.50 security deposit, the landlord claims a total of \$405.03 including recovery of the \$50.00 filing fee. The tenancy agreement shows a "Cost Recovery Schedule" which specifies an administration fee of \$25.00 on all overdue accounts, and administration fee of \$25.00 plus the bank service fee on any returned cheque and \$100.00 if the residency is terminated before the expiration of 5 months from the occupancy date. It further specifies that the liquidated damages clause is to cover costs of advertising, suite showing, credit checks, paperwork administration, and is not intended as a penalty.

The tenant provided a forwarding address to the landlord in writing on November 15, 2013. The landlord's application was filed on December 30, 2013 and the notice of hearing provided by the Residential Tenancy Branch is dated January 2, 2014.

Analysis

I have reviewed the tenancy agreement and other documents provided by the landlord, and in the absence of any evidence to the contrary, I find that the landlord did credit the tenant \$425.00 for December's rent as a result of re-renting the rental unit during that month, and I find that amount is appropriate. I am further satisfied that the tenant's rent cheque for that month was returned by the landlord's financial institution for insufficient funds. The tenant has not paid the outstanding amount, and I am satisfied that the landlord has established a claim for unpaid rent in the amount of \$452.00.

I am also satisfied that the tenancy agreement signed by the parties indicates that late payment of rent is subject to a \$25.00 administration fee, and the landlord is entitled to recover that amount. However, the regulations to the *Residential Tenancy Act* specify that 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, and a service fee charged by a financial institution to the landlord for the return of a tenant's cheque. In this case, I am satisfied that the cheque was returned for insufficient funds, but the Returned Item Notice does not show any charge to the landlord. Therefore, the landlord's claim for \$37.50 is not substantiated by any evidence, and the landlord's application cannot succeed.

The landlord also applies for liquidated damages, and I find that the tenant moved out of the rental unit prior to the end of the fixed term, and the landlord is entitled to recover \$100.00.

With respect to the cleaning charges on the form provided by the landlord, I decline to make any such order because I find that the tenant has not been put on notice for damages. Therefore, the landlord's claims for carpet cleaning, cleaning drapes and cleaning the rental unit are dismissed. If the landlord wishes to pursue that claim, the landlord must make an application for dispute resolution claiming damages and/or a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement.

In the circumstances, I find that the landlord has established a claim as follows:

Date	Description	Debit	Credit	Balance
30 Nov 2013	Dec Rent Due		877.00	877.00
02 Dec 2013	Late Fee		25.00	902.00

15 Dec 2013	Liq Dam		100.00	1,002.00
16 Dec 2013	Re-rented	425.00		577.00
16 Dec 2013	Security Deposit	438.50		138.50
16 Apr 2014	Filing Fee		50.00	188.50

Conclusion

For the reasons set out above, I hereby order the landlord to keep the security deposit of \$438.50 and I grant a monetary order in favour of the landlord as against the tenant pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$188.50.

The portion of the landlord's claim for damages (cleaning costs) is hereby dismissed with leave to reapply.

This order is final and binding and may be enforced.

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 16, 2014

Residential Tenancy Branch

