



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Parkview Towers
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNR, MNSD, MNDC, FF

Introduction

This hearing was convened by way of conference call in response to the landlord's application for a Monetary Order for unpaid rent or utilities; for an Order permitting the landlord to keep all or part of the tenants' security deposit; for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act* (Act), regulations or tenancy agreement and to recover the filing fee from the tenants for the cost of this application.

One of the tenants AF and an agent for the landlord attended the conference call hearing and gave sworn testimony. The landlord provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. The tenant confirmed receipt of evidence. All evidence and testimony of the parties has been reviewed and are considered in this decision.

Issue(s) to be Decided

- Is the landlord entitled to a Monetary Order for unpaid rent or utilities?
- Is the landlord entitled to keep the security deposit?
- Is the landlord entitled to a Monetary Order for money owed or compensation for damage or loss?

Background and Evidence

The parties agreed that this tenancy started on February 01, 2013 for a fixed term tenancy of one year. Rent for this unit was \$1,670.00 per month and this was increased

to \$1,690.00 per month on February 01, 2014. Rent was due on the first day of each month. The tenants paid a security deposit of \$835.00 on January 22, 2013. The landlord also collected an amount of \$1,670.00 for the last month's rent and these amounts are held in trust by the landlord.

The landlord's agent testified that a One Month Notice to End Tenancy was served upon the tenants on February 13, 2014 in person. This Notice informed the tenants that the landlord seeks to end the tenancy because rent is repeatedly late and because the tenants have breached a material term of the tenancy agreement which was not corrected within a reasonable time after written notice to do so. The One Month Notice had an effective date of March 13, 2014. The tenants did not dispute the Notice and vacated the rental unit on March 09, 2014.

The landlord's agent testified that there is outstanding rent for January, 2014 of \$1,670.00 and for February, 2014 of \$1,690.00. The landlord also seeks outstanding rent from March 01 to March 09, 2014 of \$490.65. The landlord's agent testified that the tenants had paid rent for January and February by cheque and both these cheques were returned due to insufficient funds (NSF). The landlord's agent refers to the tenancy agreement in which there is a clause that indicates that a fee of \$25.00 will be added to the tenants' account for any NSF fees and late fees. The landlord therefore seeks to recover NSF fees of \$50.00 and late fees of \$50.00 for January and February, 2014.

The landlord's agent refers to the move out condition inspection report which details the condition of the unit at the end of the tenancy. The landlord's agent testified that the tenants agreed in writing that the landlord could retain from the security deposit and last month's rent payment the amounts of \$100.00 for suite cleaning, \$126.00 for carpet cleaning and \$161.40 for cleaning the window coverings. The tenants also agreed the landlord could retain any amounts for the unpaid rent, NSF fees and late fees. The landlord seeks a Monetary Order for \$1,833.05 plus the \$50.00 filing fee.

The tenant testified that he does not dispute the landlord's claim for unpaid rent, NSF fees, and late fees or for cleaning the suite, carpet cleaning or window covering cleaning. The tenant testified that he was having problems getting paid from his employer which caused cash flow problems for the tenants and prevented the tenants paying the rent. The tenant testified that he has every intention of paying back what is owed to the landlord.

Analysis

I have considered the documentary evidence and sworn testimony before me. I refer the parties to s. 26 of the *Act* which states:

A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

I am satisfied with the undisputed evidence before me that the tenants failed to pay rent for January, February and March, 2014. The landlord is therefore entitled to recover the unpaid rent of \$3,850.65. I further find the landlord is entitled to recover \$50.00 in NSF fees and \$50.00 in late fees incurred in January and February, 2014 as per clause 10 of the tenancy agreement.

With regard to the landlord's claim for cleaning, carpet cleaning and window covering cleaning; the tenant has agreed that the landlord is entitled to these costs totaling \$387.40. I therefore uphold the landlord's claim for a monetary award for this cleaning.

With regard to the landlord's claim to keep the security deposit; if the tenants have agreed in writing that the landlord may retain all or part of the security deposit at the end of the tenancy then the landlord is entitled to do so without filing a claim. I find the tenants have signed the move out inspection report agreeing that the landlord may keep the security deposit of \$835.00 and the fee the tenants paid of \$1,670.00 for the last

month's rent that was also held in trust by the landlord, even through the landlord is not entitled to collect the last month's rent at the start of the tenancy. Consequently, I am not required to make a decision regarding the security deposit and I have offset the security deposit and the last month's rent held in trust by the landlord from the landlord's monetary claim.

As the landlord has been successful with their claim I find the landlord is entitled to recover the **\$50.00** filing fee from the tenants pursuant to section 72(1) of the *Act*. The landlord will receive a Monetary Order pursuant to s. 67 and 72(1) of the *Act* for the following amount:

Unpaid rent	\$3,850.65
NSF fees and late fees	\$100.00
Cleaning, carpet cleaning and window covering cleaning	\$387.40
Less security deposit and last month's rent	(-\$2,505.00)
Filing fee	\$50.00
Total amount due to the landlord	\$1,883.05

Conclusion

I HEREBY FIND in favor of the landlord's monetary claim. A copy of the landlord's decision will be accompanied by a Monetary Order for **\$1,883.05**. The Order must be served on the tenants; if the tenants fail to comply with this Order the Order is enforceable through the Provincial Court as an Order of that Court.

Dated: June 18, 2014

Residential Tenancy Branch

