



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 479711 ALBERTA LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR MNR MNSD MNDC FF
CNC, CNR, ERP, FF, RP

Introduction

This hearing was convened as a result of cross applications. In the Landlord's application for dispute resolution the Landlord sought an order of possession for unpaid rent or utilities, a monetary order for unpaid rent or utilities, for authorization to keep all or part of the security deposit, for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and to recover the filing fee. The Tenants sought an Order cancelling the Notice to End Tenancy for Cause and Notice to End Tenancy for Unpaid Rent, an Order that the Landlord make repairs, emergency and otherwise, and to recover the filing fee.

Both parties appeared at the hearing. The hearing process was explained and the participants were asked if they had any questions. Both parties provided affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

I have reviewed all oral and written 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.

Preliminary and Procedural Matters

At the outset of the continuation of this hearing on December 2, 2014, the parties advised that the Tenants vacated the rental unit on or about November 3, 2014.

As a result, an Order of Possession was no longer required. Similarly, the Tenant's application was no longer applicable. The only issue left to be decided was the

Landlord's application for a Monetary Order for unpaid rent, and to retain the security deposit in partial satisfaction of that debt.

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 Tenants' security deposit under the *Act*?

Background and Evidence

A month to month tenancy agreement between the parties began on January 15, 2014 November 3, 2014 when the Tenants vacated the rental unit. Monthly rent in the amount \$1,200.00 was due on the last day of each month preceding the month for which rent was payable. The tenant paid a \$600.00 security deposit at the start of the tenancy which the landlord continues to hold. A copy of the residential tenancy agreement was introduced in evidence.

The Landlord applied for dispute resolution on September 12, 2014, after they issued a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "10 Day Notice") on the tenant dated September 3, 2014 via personal service on the tenant at the rental unit. , The 10 Day Notice has an effective vacancy date of September 14, 2014.

The Landlord is seeking a monetary order in the amount of \$4,925.00 comprised of the following:

Item Description	Amount
Late fee for July 2014 rent	\$25.00
Unpaid rent for August 2014	\$1,200.00
Late fee for August 2014 rent	\$25.00
Unpaid rent for September 2014	\$1,200.00
Late fee for September 2014 rent	\$25.00
Unpaid rent for October 2014	\$1,200.00
Late fee for October 2014 rent	\$25.00
Unpaid rent for November 2014	\$1,200.00
Late fee for November 2014 rent	\$25.00
TOTAL MONETARY CLAIM	\$4,925.00

The Tenants did not dispute the Landlord's claim for rent owing in the amount of \$4,800.00; however, the Tenants disputed the late fees. A review of the residential tenancy agreement confirms that no such provision for charging late fees existed. The Tenants agreed that the security deposit could be applied to the outstanding rent.

Analysis

Based on the documentary evidence, the testimony of the parties, and on the balance of probabilities, I find the following.

The Tenants breached section 26 of the Act by failing to pay rent for August, September, October and November 2014. I find the Landlord has met the burden of proof and I grant the Landlord a Monetary Order in the amount of **\$4,800.00** representing unpaid rent owing by the Tenants for that time period. I disallow the Landlord's claim for late fees pursuant to section 7(2) of the Regulations as the tenancy agreement does not provide for such fees. As the landlord's application had merit, I **grant** the landlord the recovery of the **\$50.00** filing fee. I find that the Landlord has established a total monetary claim of \$4,850.00 comprised of \$4,800.00 in unpaid rent and loss of rent, plus the \$50.00 filing fee.

I find this claim meets the criteria under section 72(2)(b) of the *Act* to be offset against the Tenants' security deposit, which the Landlord continues to hold, in the amount of \$600.00, which has accrued \$0.00 in interest to date. I authorize the Landlord to retain the Tenants' full security deposit of \$600.00 in partial satisfaction of the landlord's monetary claim, and 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 **\$4,250.00**. 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

I find that the Landlord has established a total monetary claim of \$4,850.00 as indicated above. I authorize the Landlord to retain the Tenants' full security deposit of \$600.00 in partial satisfaction of the claim, and I grant the Landlord a monetary order under section 67 for the balance due of \$4,250.00. 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: December 04, 2014

Residential Tenancy Branch

