



Dispute Resolution Services

Page: 1

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 MNSD, MNDC, MNR, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord for a monetary order for unpaid rent, for a monetary for money owed, for an order to retain the security deposit in partial satisfaction of the claim and to recover the filing fee from the tenants.

The landlord attended the hearing. As the tenants did not attend the hearing, service of the Notice of Dispute Resolution Hearing was considered.

The Residential Tenancy Branch Rules of Procedure states that each respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing.

The landlord's agent testified the Application for Dispute Resolution and Notice of Hearing were sent by registered mail sent on July 31, 2015. Canada post tracking numbers were provided as evidence of service, the tenants did not appear.

Section 90 of the Act determines that a document served in this manner is deemed to have been served five days later. I find that the tenants have been duly served in accordance with the Act.

The landlord's agent appeared gave testimony and was provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts and issues in this decision.

Issues to be Decided

Is the landlord entitled to a monetary order for unpaid rent?
Is the landlord entitled to monetary compensation for money owed?
Is the landlord entitled to retain the security deposit in partial satisfaction of the claim?

Background and Evidence

The tenancy began on December 1, 2013. Rent in the amount of \$835.00 was payable on the first of each month. A security deposit of \$417.50 was paid by the tenants.

The landlord claims as follows:

a.	Unpaid rent for July 2014	\$ 835.00
b.	Unpaid parking fee for July 2014	\$ 10.00
c.	Late fee for July 2014	\$ 25.00
d.	Filing fee	\$ 50.00
	Total claimed	\$ 920.00

The landlord's agent testified that tenants failed to pay rent and parking fee for July 2014. The agent stated that the tenancy agreement provides a clause that they can claim a late fee of \$25.00, should rent not be paid on time. The agent stated that the tenant had a \$2.50 credit on their account, which should be applied to the money owed. The landlord seeks a monetary award in the amount of \$867.50

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

In a claim for damage or loss under the Act or tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities.

To prove a loss and have one party pay for the loss requires the claiming party to prove four different elements:

- Proof that the damage or loss exists;
- Proof that the damage or loss occurred due to the actions or neglect of the Respondent in violation of the Act or agreement;
- Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and

- Proof that the Applicant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

Where the claiming party has not met each of the four elements, the burden of proof has not been met and the claim fails. In this case, the landlord has the burden of proof to prove their claim.

Section 7(1) of the Act states that if a landlord or tenant does not comply with the Act, regulation or tenancy agreement, the non-comply landlord or tenant must compensate the other for damage or loss that results.

Section 67 of the Act provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

Section 26 of the Residential Tenancy Act states:

26 (1) 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.

The undisputed evidence of the landlord's agent was the tenants did not pay any rent or the parking fee for July 2014. I find the tenants have breached section 26 of the Act when they failed to pay rent and the parking fee when due under the tenancy agreement and this has caused losses to the landlord. Therefore, I find the landlord is entitled to recover unpaid rent and parking in the amount of **\$845.00**.

Further, I have reviewed clause 3(a) of the tenancy agreement. Although the landlord has claimed the amount of \$25.00 for the late fee, the agreement states late payments of rent are subject to a \$20.00 late fee. As the tenants had not pay rent for July 2014, I find the landlord is entitled to recover the late fee in the amount of **\$20.00**.

I find that the landlord has established a total monetary claim of **\$912.50** comprised of the above described amounts and the \$50.00 fee paid for this application. Less the \$2.50 credit.

I order that the landlord retain the security deposit and interest of **\$417.50** in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of **\$495.00**.

This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

Conclusion

The landlord is granted a monetary award and may keep the security deposit in partial satisfaction of the claim and the landlord is granted a formal order for the balance due.

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: January 23, 2015

Residential Tenancy Branch