



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding AL STOBBER CONSTRUCTION LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNR, MNSD, MNDC, FF

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the Act) for:

- a monetary order for unpaid rent, and for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover its filing fee for this application from the tenant pursuant to section 72.

The tenant did not attend this hearing, although I waited until 1314 in order to enable the tenant to connect with this teleconference hearing scheduled for 1300. The landlord's agent attended the hearing and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

The agent testified that the landlord served the tenant with the dispute resolution package (including all evidence before me) on 18 March 2015 by registered mail. The landlord provided me with a Canada Post tracking number that showed the same. The agent testified that the mailing was sent to the tenant's forwarding address, but was returned to sender as the tenant had moved. The agent testified that the forwarding address was received by one of the landlord's agents over the phone from the tenant. On the basis of this evidence, I am satisfied that the tenant was deemed served with the dispute resolution package pursuant to paragraph 89(1)(d) and section 90 of the Act.

Preliminary Issue – Order for Evidence After Hearing

Rule 3.19 of the *Residential Tenancy Branch Rules of Procedure* (the Rules) provides that I may direct that evidence be submitted after the commencement of a hearing. At the hearing I ordered the tenancy agreement and condition move out inspection report to be sent by fax as the ones in the file were difficult to read and two pages were missing from the tenancy agreement. The two pages of the tenancy agreement that were missing were part of the standard form agreement used by the landlord association.

Issue(s) to be Decided

Is the landlord entitled to a monetary award for unpaid rent and losses arising out of this tenancy? Is the landlord entitled to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary award requested? Is the landlord entitled to recover the filing fee for this application from the tenant?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the agent, not all details of the submissions and / or arguments are reproduced here. The principal aspects of the landlord's claim and my findings around it are set out below.

This tenancy began 16 January 2015. The parties entered into a written tenancy agreement dated 16 January 2015. Monthly rent of \$1,000.00 is due on the first. Clause 10 of the tenancy agreement provides for an administration fee in the amount of \$25.00 for late rent payment. The tenancy ended 23 February 2015 when the tenant vacated the rental unit.

The landlord continues to hold the tenant's deposits in the amount of \$512.50, which was collected at the beginning of the tenancy.

On 4 February 2015 the landlord issued a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the 10 Day Notice) to the tenant. The 10 Day Notice set out that the tenant had failed to pay rent in the amount of \$1,025.00, which was due 1 February 2015. The agent testified that the amount on the 10 Day Notice included a late fee in the amount of \$25.00.

The tenant did not attend the condition move out inspection. The agent testified that the tenant was provided with two opportunities.

The agent testified that the rental unit was not cleaned and, in particular, the carpets were not professionally cleaned. These deficiencies are noted on the security deposit statement on the condition move out inspection report. The report also notes the \$1,025.00 in arrears.

The landlord provided an email that detailed the cleaning person's charges in the amount of \$117.00 for the rental unit. The agent testified that this cleaner is a third party and not an employee of the landlord. The agent testified that this cost was subject to the landlord's "mark up" of \$3.00.

I was provided with a copy of the receipt for carpet cleaning in the amount of \$73.50.

The landlord claims for \$1,218.50:

Item	Amount
Unpaid February Rent	\$1,000.00
February Late Fee	25.00
Cleaning	120.00
Carpet Cleaning	73.50
Total Monetary Order Sought	\$1,218.50

Analysis

Subsection 26(1) of the Act sets out:

A tenant must pay rent when it is due under the tenancy agreement....unless the tenant has a right under this Act to deduct all or a portion of the rent.

The agent testified that the tenant occupied the rental unit until 23 February 2015. Pursuant to subsection 26(1), the tenant owed rent as of 1 February 2015. It is the uncontested, sworn testimony of the agent that the tenant did not pay this amount. I find, on a balance of probabilities, that the landlord is entitled to the full rent amount for February in the amount of \$975.00.

Paragraph 7(1)(d) of the *Residential Tenancy Regulations* (the Regulations) provides that a landlord may charge an administration fee of \$25.00 for late payment of rent. Pursuant to subsection 7(2) a late fee charge may only be applied if the tenancy agreement provides for that fee. The tenancy agreement provides for this fee at clause 10. I find that the landlord is entitled to charge the fee. The landlord is entitled to recover \$25.00 for February's late rent.

Residential Tenancy Policy Guideline, 1. Landlord & Tenant – Responsibility for Residential Premises” (Guideline 1) sets out the tenant’s responsibilities:

The tenant must maintain "reasonable health, cleanliness and sanitary standards" throughout the rental unit or site, and property or park. The tenant is generally responsible for paying cleaning costs where the property is left at the end of the tenancy in a condition that does not comply with that standard. ...

On the basis of the sworn and uncontested testimony of the agent, I accept that the cleaning and carpet cleaning costs were necessary in order to bring the rental unit into compliance with the standards of the Act and Guideline 1.

Section 67 of the Act provides that, where an arbitrator has found that damages or loss results from a party not complying with the Act, an arbitrator may determine the amount of that damages or loss and order the wrongdoer to pay compensation to the claimant. The claimant bears the burden of proof. The claimant must show the existence of the damage or loss, and that it stemmed directly from a violation of the agreement or a contravention of the Act by the wrongdoer. If this is established, the claimant must provide evidence of the monetary amount of the damage or loss.

The landlord has provided receipts to substantiate costs in the amount of \$117.00 for cleaning and \$73.50 for carpet cleaning. I find that the landlord has substantiated these amounts and has proven that these amounts are the monetary amount of its damages. I do not accept the agent’s testimony regarding the \$3.00 mark up. The agent did not provide any basis for this increased amount.

The landlord applied to keep the tenant’s security deposit. I allow the landlord to retain the security deposit in partial satisfaction of the monetary award. No interest is payable over this period.

As the landlord was successful in this application, I find that the landlord is entitled to recover the \$50.00 filing fee paid for this application.

Conclusion

I issue a monetary order in the landlord's favour in the amount of \$756.00 under the following terms:

Item	Amount
Unpaid February Rent	\$1,000.00
February Late Fee	25.00
Cleaning	120.00
Carpet Cleaning	73.50
Offset Deposits	-512.50
Recovery of Filing Fee for this Application	50.00
Total Monetary Order	\$756.00

The landlord is provided with this order in the above terms and the tenant(s) must be served with this order as soon as possible. Should the tenant(s) fail to comply with this order, this order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under subsection 9.1(1) of the Act.

Dated: August 25, 2015

Residential Tenancy Branch

