



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding BAYSIDE PROPERTY SERVICES LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNR, MNSD, FF

Introduction

This hearing was convened as a result of the Landlord's application for dispute resolution under the *Residential Tenancy Act* (the "Act") for 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, and to recover the filing fee.

The Landlord attended the teleconference hearing. During the hearing the Landlord was given the opportunity to provide his/her evidence orally. A summary of the testimony is provided below and includes only that which is relevant to the hearing.

As the Tenant did not attend the hearing, service of the Landlord's Application and Notice of a Dispute Resolution Hearing (the "Application Materials") was considered. The Landlord testified that the Application Materials were served on the Tenant by registered mail on July 23, 2015. The Landlord provided the tracking number in evidence. Section 90 of the Act provides that documents served in this manner are deemed served five days later. I accept the Landlord's undisputed testimony and find that the Tenant was sufficiently served as July 28, 2015 under the *Act* as a result.

Preliminary and Procedural Matters

At the outset of the hearing, the Landlord testified that the Tenant vacated the rental unit on or about August 3, 2015, since filing his application. As a result, the Landlord requested to withdraw their request for an Order of possession as the Tenant had already given up possession of the rental unit by vacating the rental unit on August 3, 2015.

Issues to be Decided

1. Is the Landlord entitled to a Monetary Order under the *Act*, and if so, in what amount?
2. What should happen to the Tenant's security deposit under the *Act*?
3. Is the Landlord entitled to recover the filing fee?

Background and Evidence

A month to month tenancy agreement between the parties began on or about March 1, 2015 and ended on August 3, 2015 when the Tenant vacated the rental unit. At the time of the hearing, monthly rent in the amount \$880.00 was due on the first day of each month during the tenancy. The Tenant paid a \$440.00 security deposit at the start of the tenancy which the Landlord continues to hold.

The Tenant failed to pay rent for the months of June and July 2015²⁰¹⁵. The Landlord issued a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities on July 7, 2015 indicating the amount of \$1,835.00 was due as of July 1, 2015; notably, this amount included late fees and NSF fees which were specifically provided for in the tenancy agreement (the "Notice").

The Landlord testified that the Notice was served on the Tenant by posting to the rental unit door on July 7, 2015. Section 90 of the *Act* provides that documents served in this way are deemed served three days later, namely July 10, 2015. The Notice has an effective vacancy date of July 17, 2015 which automatically corrects under the *Act* to July 20, 2015 (10 days after service).

The Notice informed the Tenant that the Notice would be cancelled if the rent was paid within five days of service, namely, July 25, 2015. The Notice also explains the Tenant had five days from the date of service to dispute the Notice by filing an Application for Dispute Resolution.

The Landlord testified that the Tenant did not pay the rent within the five days as prescribed by the *Act*, nor did the Tenant apply for dispute resolution.

The Landlord further testified that the Tenant failed to pay rent for August 2015.

The Landlord is seeking a monetary Order in the amount of \$* comprised of the following:

Unpaid rent for June	\$880.00
NSF fee for June	\$25.00
Late fee for June	\$25.00
Unpaid rent for July	\$880.00
Late fee for July	\$25.00
Unpaid rent for August	\$880.00
Filing fee	\$50.00
TOTAL MONETARY CLAIM	\$2,765.00

The Landlord provided undisputed testimony confirming the amounts described in the table above.

Analysis

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

Pursuant to section 26 of the *Act*, a Tenant must pay rent when it is due in accordance with the tenancy agreement.

Based on the above, I find the Tenant breached section 26 of the *Act* by failing to pay rent for June, July and August 2015. I also find the Landlord is entitled to recovery of the late and NSF fees as claimed.

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 **\$2,765.00** comprised of the following:

Unpaid rent for June	\$880.00
NSF fee for June	\$25.00
Late fee for June	\$25.00
Unpaid rent for July	\$880.00
Late fee for July	\$25.00

Unpaid rent for August	\$880.00
Filing fee	\$50.00
TOTAL AMOUNT AWARDED	\$2,765.00

I find this claim meets the criteria under section 72(2)(b) of the *Act* to be offset against the Tenant's security deposit, which the Landlord continues to hold, in the amount of \$440.00. I authorize the Landlord to retain the Tenant's full security deposit of \$440.00 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 **\$2,325.00**. 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 \$2,765.00 as indicated above. I authorize the Landlord to retain the Tenant's full security deposit of \$440.00 in partial satisfaction of the claim, and I grant the Landlord a monetary Order under section 67 for the balance due of **\$2,325.00**. 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*.

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: September 28, 2015

Residential Tenancy Branch

