



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MNSD, 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 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 his filing fee for this application from the tenant pursuant to section 72.

The landlord attended the hearing via conference call and provided undisputed affirmed testimony. The tenant did not attend or submit any documentary evidence. The landlord provided affirmed testimony that the tenant was served with the notice of hearing package and the submitted documentary evidence via Canada Post Registered Mail on January 14, 2016. An attempt at service was made in which a notice was left by Canada Post on January 15, 2016 and that on January 18, 2016 the package was "refused" by the tenant and returned to the landlord. The landlord has submitted in support a copy of the Canada Post Receipt, Customer Receipt Tracking label, a copy of the envelope returned by Canada Post indicating that it was "refused" and a print out of the Canada Post online tracking search as confirmation.

I accept the undisputed affirmed evidence of the landlord and find that the tenant was properly served as per sections 88 and 89 of the Act with the notice of hearing package and the submitted documentary evidence. Although the tenant did not receive the packages, the tenant is deemed served as per section 90 of the Act 5 days later.

Preliminary Issue

At the outset it was clarified that the landlord's claim included compensation for damage or loss for cleaning as set out in the written details of dispute on the landlord's application for dispute.

Issue(s) to be Decided

Is the landlord entitled to a monetary order for unpaid rent, for money owed or compensation for damage or loss and recovery for the filing fee?

Is the landlord entitled to retain all or part of the security deposit?

Background and Evidence

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

This tenancy began on August 1, 2015 on a month-to-month basis as shown by the submitted copy of the signed tenancy agreement dated July 29, 2015. The monthly rent was \$700.0 payable on the 1st day of each month and a security deposit of \$350.00 was paid.

The landlord seeks a monetary claim of \$2,498.00 which consists of:

\$130.00	Rental Arrears September
\$25.00	Late Rent Fee September
\$700.00	Unpaid rent October
\$25.00	Late Rent Fee October
\$700.00	Unpaid Rent November
\$25.00	Late Rent Fee November
\$700.00	Unpaid Rent December
\$25.00	Late Rent Fee December
\$168.00	Cleaning (14 hours at \$12 per hour)

The landlord provided affirmed testimony that the tenant failed to pay rent for September (\$130.00), October (\$700.00), November (\$700.00) and December (\$700.00). The landlord also stated that for each month of a complete payment of rent the tenant owed a \$25.00 late rent fee as provided in the "Additions to the Residential Tenancy Agreement" under clause number 6 which states,

Rent is due on or before the 1st of each month. If rent is not paid in full on or before the 1st of each month a late fee of \$25.00. Will be added to the rental amount due. Interest will be charges at 2% per month on all over due accounts.

The landlord stated that the tenant left the rental unit dirty requiring 14 hours of cleaning.

During the hearing that the landlord was cautioned that charging interest for late rent was not allowed under the Act and that the landlord should amend any future tenancy agreements to reflect this. The landlord clarified that this condition of the tenancy agreement was recently changed just 6 months prior.

Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. In this case, the onus is on the landlord to prove on the balance of probabilities that the tenant caused the damage and that it was beyond reasonable wear and tear that could be expected for a rental unit of this age.

I accept the undisputed affirmed evidence of the landlord and find that the tenants failed to pay rent as claimed by the landlord from September to December 2015 prior to vacating the rental unit. The landlord has also established as per section 6 of the "additions" that the landlord is also entitled to compensation of a \$25.00 late rent fee for each month of rent not paid in full while occupying the rental unit. I also find based upon the undisputed affirmed evidence of the landlord that the tenant left the rental unit dirty requiring cleaning as claimed by the landlord. On this basis, the landlord has established a monetary claim of \$2,498.00.

The landlord applied to keep the tenant's \$350.00 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 \$100.00 filing fee paid for this application.

Conclusion

I issue a monetary order in the landlord's favour in the amount of \$2,080.00 under the following terms:

Item	Amount
Unpaid September Rent	\$130.00
Late Rent Fee	\$25.00
Unpaid October Rent	\$700.00
Late Rent Fee	\$25.00
Unpaid November Rent	\$700.00
Late Rent Fee	\$25.00
Unpaid December Rent	\$700.00
Late Rent Fee	\$25.00
Offset Security Deposit	-350.00
Recovery of Filing Fee	\$100.00
Total Monetary Order	\$2080.00

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 orders of that Court.

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: August 23, 2016

Residential Tenancy Branch