



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Homelife Peninsula Property Management
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNR, MNDC, MNSD, FF

Introduction

This hearing was convened by way of conference call concerning an application made by the landlord seeking a monetary order for unpaid rent or utilities; a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; for an order permitting the landlord to keep all or part of the pet damage deposit or security deposit; and to recover the filing fee from the tenants for the cost of the application.

The landlord was represented at the hearing by an agent who gave affirmed testimony and provided evidentiary material in advance of the hearing. However, the line remained open while the phone system was monitored for 10 minutes prior to hearing any testimony and no one for the tenants attended the call. The landlord's agent testified that the tenants were each individually served with the Landlord Application for Dispute Resolution, evidentiary material and notice of this hearing by registered mail on April 22, 2016 and has provided copies of both sides of 2 Registered Domestic Customer Receipts stamped with that date by Canada Post and I am satisfied that both tenants have been served in accordance with the *Residential Tenancy Act*.

Issue(s) to be Decided

- Has the landlord established a monetary claim as against the tenants for unpaid utilities?
- Has the landlord established a monetary claim as against the tenants for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and more specifically for late rent fees and N.S.F. fees?
- Should the landlord be permitted to keep all or part of the pet damage deposit or security deposit in full or partial satisfaction of the claim?

Background and Evidence

The landlord's agent testified that this fixed term tenancy began on July 1, 2015 and expired on June 30, 2016 at which time the tenants were required to vacate the rental unit. Rent in the amount of \$1,429.00 per month was payable on the 1st day of each month and there are no rental arrears. On May 29, 2015 the landlord collected a security deposit from the tenants in the amount of \$697.50 as well as a pet damage deposit of \$697.50, both of which are still held in trust by the landlord. The rental unit is a single family dwelling, and a copy of the tenancy agreement has been provided.

The landlord's agent further testified that although not certain of the date the tenants actually moved out of the rental unit, the parties conducted a move-out condition inspection on June 4, 2016 and a copy of a report has been provided. During that inspection the landlord received the tenants' forwarding address in writing.

The tenants failed to pay the water bills as required under the tenancy agreement, and the landlord claims \$424.27 as against the tenants for unpaid utilities. A copy of a water bill for \$228.35 and demand notices to the tenants have been provided, as well as a demand letter dated February 22, 2016 for an estimated water bill in the amount of \$206.95. A calculation of the estimate has also been provided, taking the amount of the previous bill (\$228.36) divided by 128 days, multiplied by 116 days.

The tenancy agreement also provides for late rent payment fees of \$25.00 each and N.S.F. fees of \$25.00 each. The landlord's agent testified that the tenants provided 6 N.S.F. cheques during the tenancy, for a claim of \$150.00, however the tenants had a \$1.00 credit on the ledger as an overpayment of rent. The tenants were also late with rent 5 times during the tenancy. A copy of a tenant ledger has been provided. The landlord claims \$125.00 for late fees and \$150.00 for N.S.F. fees, less the \$1.00 credit, for a total claim of fees of \$274.00 for non-refundable fees.

Analysis

Firstly, the Landlord Application for Dispute Resolution was filed on April 21, 2016, prior to the end of the tenancy. The landlord's evidentiary material was provided to the Residential Tenancy Branch on April 26, 2016, and the tenants were deemed served 5 days after mailing the application and notice of this hearing, being April 27, 2016. The landlord's agent was not able to provide a date that the tenants moved out of the rental unit, but the tenancy agreement ends the tenancy on June 30, 2016 and the landlord received the tenant's forwarding address in writing on June 4, 2016. I accept that the landlord has complied with Section 38 of the *Residential Tenancy Act*.

The landlord's evidentiary material was filed prior to the end of the tenancy, and therefore the Tenant Ledger provided does not illustrate anything that the tenants paid or owed after March 31, 2016. The landlord's agent testified that the tenant still owes for the water bills and late fees. I accept the undisputed testimony of the landlord's agent that the tenants owe \$424.27 and that the tenants were late with rent 6 times during the tenancy.

The regulations specify what fees a landlord may charge:

7 (1) A landlord may charge any of the following non-refundable fees:

- (a) direct cost of replacing keys or other access devices;
- (b) direct cost of additional keys or other access devices requested by the tenant;
- (c) a service fee charged by a financial institution to the landlord for the return of a tenant's cheque;
- (d) subject to subsection (2), an administration fee of not more than \$25 for the return of a tenant's cheque by a financial institution or for late payment of rent;
- (e) subject to subsection (2), a fee that does not exceed the greater of \$15 and 3% of the monthly rent for the tenant moving between rental units within the residential property, if the tenant requested the move;
- (f) a move-in or move-out fee charged by a strata corporation to the landlord;
- (g) a fee for services or facilities requested by the tenant, if those services or facilities are not required to be provided under the tenancy agreement.

(2) A landlord must not charge the fee described in paragraph (1) (d) or (e) unless the tenancy agreement provides for that fee.

(Underlining Added). Under subsection (1) (c) a landlord may charge a service fee that is charged by a financial institution to the landlord for a returned cheque. Subsection (1) (d) allows a landlord to claim an administrative fee for a returned cheque or for late payment, but not both, and the landlord can only charge the fee in (1) (d) if it's contained in the tenancy agreement. Regardless of whether or not the landlord claims the late fee, the landlord is still entitled to claim the N.S.F. fee, but that must be the amount of a service fee charged by a financial institution to the landlord if the landlord also claims a late fee. In this case, I find that the landlord has established the \$150.00 late fees because it is contained in the tenancy agreement. With respect to the N.S.F. fees, the landlord has not provided any information, testimony or evidence of the cost the landlord was charged for any of the N.S.F. fees charged.

I refer to Residential Tenancy Branch Policy Guideline #17 – Security Deposit and Set-off, which states, in part:

C. RETURN OR RETENTION OF SECURITY DEPOSIT THROUGH DISPUTE RESOLUTION

1. The arbitrator will order the return of a security deposit, or any balance remaining on the deposit, less any deductions permitted under the Act, on:
 - ☐ a landlord's application to retain all or part of the security deposit; or
 - ☐ a tenant's application for the return of the deposit.

unless the tenant's right to the return of the deposit has been extinguished under the Act¹⁴. The arbitrator will order the return of the deposit or balance of the deposit, as applicable, whether or not the tenant has applied for dispute resolution for its return.

I find that the landlord has established a claim for unpaid utilities amounting to \$424.27 and late rent fees of \$150.00, less the \$1.00 overpayment of rent. Since the landlord has been partially successful with the application the landlord is also entitled to recovery of the \$100.00 filing fee.

I order the landlord to keep \$673.27 of the security deposit and return the balance of \$24.23 as well as the \$697.50 pet damage deposit to the tenants within 15 days of the date of this Decision.

Conclusion

For the reasons set out above, I hereby order the landlord to keep the \$673.27 of the security deposit in full satisfaction of the landlord's claim, and I order the landlord to return the balance of \$24.23 as well as the \$697.50 pet damage deposit to the tenants within 15 days of the date of this Decision.

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: October 17, 2016

Residential Tenancy Branch