



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, 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; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The tenants did not participate in the conference call hearing, which lasted approximately 15 minutes. The landlord attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

The landlord testified that on May 5, 2016 she forwarded the landlord's application for dispute resolution via registered mail to the tenants. The landlord provided a Canada Post tracking number as proof of service. Based on the testimony of the landlord and in accordance with sections 89 and 90 of the *Act*, I find that the tenants have been deemed served with the application on May 10, 2016, the fifth day after their registered mailing.

Issue(s) to be Decided

Is the landlord entitled to a monetary order for unpaid rent?

Is the landlord authorization to recover the filing fee for this application from the tenant?

Background and Evidence

As per the submitted tenancy agreement and testimony of the landlord, the tenancy began on August 1, 2014 on a fixed term. Rent in the amount of \$1,000.00 was payable on the first of each month. The tenants remitted a security deposit in the amount of \$500.00 at the start of the tenancy. The tenants vacated the rental unit sometime in May of 2016.

The landlord seeks a monetary order of \$2,000.00 for unpaid rent from August 2014 to August 2015. The landlord claimed that the tenants paid a total of \$11,000.00 in rent for the above 13 months.

The landlord testified she was seeking \$75.00 in fees, specifically \$25.00 for each of the three cheques returned between August 2014 and August 2015. The landlord has provided copies of returned cheques for September 1, 2014, October 1, 2014 and January 1, 2015.

The landlord is also seeking to recover the \$100.00 filing fee for this application from the tenants.

Analysis

Section 26 of the *Act* requires the tenant to pay rent on the date indicated in the tenancy agreement, which is the first day of each month. Section 7(1) of the *Act* establishes that a tenant who does not comply with the *Act*, *Residential Tenancy Regulation* (the "*Regulation*") or tenancy agreement must compensate the landlord for damage or loss that results from that failure to comply.

I find that the landlord proved that the rent for this unit was \$1,000.00. I find the landlord provided undisputed evidence that the tenants failed to pay full rent from August 2014 to August 2015. Therefore, I find that the landlord is entitled to \$2,000.00 in rent.

Section 7 of the *Regulation* establishes that a landlord may charge an administration fee of \$25.00 for the return of a tenant's cheque if the tenancy agreement provides for **that fee**. The tenancy agreement before me states that a service charge in the amount of \$35.00 will be levied for returned cheques. I find this fee is in excess of the allotted amount under the *Act* and therefore dismiss the landlord's monetary claim in respect to fees.

In accordance with the offsetting provisions of section 72 of the *Act*, I allow the landlord to retain the security deposit in the total amount of \$500.00 in partial satisfaction of the monetary award and I grant an order for the balance due \$1,500.00. As the landlord was successful in this application, I find that the landlord is entitled to recover the \$100.00 filing fee paid for the application, for a total award of \$1,600.00.

Conclusion

I issue a monetary order in the landlord's favour in the amount of \$1,600.00 against the tenant.

I dismiss the landlord's application for fees without leave to reapply.

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: November 03, 2016

Residential Tenancy Branch