



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding RELIANCE PROPERTIES LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNR, MNSD, MNDC, ERP, RP, RR, FF

Introduction

This hearing was scheduled to deal with cross applications. The tenant applied for orders for repairs and emergency repairs; authorization to reduce rent payable; and, a Monetary Order for damage or loss under the Act, regulations or tenancy agreement. The landlord applied for a Monetary Order for unpaid rent and late fees; and, authorization to retain the security deposit. The landlord was represented during the hearing; however, the tenant did not appear.

The landlord's agents confirmed receipt of the tenant's application and were prepared to respond to it. Since the tenant failed to appear at the hearing and the landlord's agents were prepared to deal with her claims, I dismissed the tenant's application without leave to reapply.

As for landlord's Application against the tenant, I was satisfied that the landlord served the tenant with its Application and I proceeded to hear from the landlord's agents without the tenant present. The landlord's agents had testified that the landlord's Application was sent to the tenant at her forwarding address on December 1, 2016 and that it was successfully delivered on December 3, 2016. The landlord's agent orally provided a registered mail tracking number. The landlord's agent orally provided the tenant's forwarding address and I noted that it matched one of the addresses provided by the tenant on her Application.

Issue(s) to be Decided

1. Is the landlord entitled to recover unpaid rent and late fees as claimed?
2. Is the landlord authorized to retain the tenant's security deposit?

Background and Evidence

The tenancy commenced on April 1, 2016 for a fixed term set to expire on November 30, 2016. The tenant paid a security deposit of \$500.00 and was required to pay rent of \$1,000.00 on the first day of every month. The Addendum to the tenancy agreement provides for a late fee of \$25.00 and an “administration fee” of \$15.00 if rent is not received on or before the first day of the month.

The tenant did not pay rent for November 2016 and on November 4, 2016 the landlord posted a 10 Day Notice to End Tenancy for Unpaid Rent on the door of the rental unit. The 10 Day Notice has a stated effective date of November 17, 2016. The landlord's agent stated the tenant vacated the rental unit on or about the effective date of November 17, 2016.

The landlord seeks to recover unpaid rent of \$1,000.00 and late fees totalling \$40.00 from the tenant.

Documentary evidence provided by the landlord included a copy of the tenancy agreement, the Addendum to the tenancy agreement; the tenant's ledger; an email from the landlord to the tenant indicating the tenant's sent cheque was returned NSF; the 10 Day Notice; and, a signed Proof of Service for the 10 Day Notice.

Analysis

Under section 26 of the Act, a tenant is required to pay rent when due under their tenancy agreement, even if the landlord has violated the Act, regulations or tenancy agreement, unless the tenant has a legal right to withhold rent. The Act provides very limited and specific circumstances when a tenant may legally withhold rent.

I accept the unopposed evidence before me that the tenant was required to pay rent of \$1,000.00 on November 1, 2016 and she failed to do so. I was not provided any evidence to suggest she had a legal right to withhold rent on November 1, 2016. Therefore, I grant the landlord's request to recover unpaid rent of \$1,000.00 from the tenant for the month of November 2016.

With respect to late fees, section 7 of the Residential Tenancy Regulations provides for all of the non-refundable fees that a landlord may charge a tenant. Under section 7, a landlord may charge a late fee up to \$25.00 provided such a term is in the tenancy agreement. Section 7 also permits a landlord to charge an “administration fee” in the event a tenant's cheque is dishonoured. I accept that the landlord is entitled to charge

the tenant with a late fee of \$25.00 and an administration charge of \$15.00 because the tenant's rent cheque for November 2016 was dishonoured and the tenant did not otherwise pay rent on or before November 1, 2016 for the month of November 2016.

I further award the landlord recovery of the \$100.00 filing fee paid for the landlord's application. I authorize the landlord to retain the tenant's security deposit in partial satisfaction of the unpaid rent.

In light of all of the above, the landlord is provided a Monetary Order to serve and enforce upon the tenant, calculated as follows:

Unpaid rent – November 2016	\$1,000.00
Late fee	25.00
Administration fee for NSF cheque	15.00
Filing fee	100.00
Less: security deposit	<u>(500.00)</u>
Monetary Order	\$ 640.00

Conclusion

The landlord has been authorized to retain the security deposit and has been provided a Monetary Order for the balance of \$640.00 to serve and enforce upon the tenant.

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: December 22, 2016

Residential Tenancy Branch