



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding NCAH BC HOLDINGS LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNR, OPR, MNSD, FF

Introduction

This hearing dealt with a landlord's Application for Dispute Resolution (the "Application") under the Residential Tenancy Act (the "Act") for:

- an order of possession for unpaid rent;
- a monetary order for unpaid rent;
- a monetary order to keep all or part of the security deposit; and
- recovery of the filing fee paid for this application from the tenant.

The tenant did not appear. The landlord's agent (the "landlord") appeared at the teleconference hearing and gave affirmed testimony. During the hearing the landlord was given a full opportunity to be heard, to present sworn testimony and make submissions. A summary of the testimony is provided below and includes only that which is relevant to the hearing.

Preliminary and Procedural Matters

The landlord had named a second occupant as a Respondent when filing their Application. At the hearing the landlord requested to amend their Application to remove the second Respondent. Therefore, the style of cause has been changed in accordance with the landlord's request.

The landlord indicated that the tenant moved out of the rental unit sometime before February 28, 2017, the end date of the fixed term tenancy. As a result, the landlord withdrew their claim for an order of possession.

As the tenant did not attend the hearing, service of the landlord's Application and Notice of a Dispute Resolution Hearing (the "Notice of Hearing") were considered.

The landlord testified that a copy of the landlord's Application and Notice of Hearing, were served on the tenant by registered mail. The landlord testified that the registered mailing was sent to the tenant's forwarding address on March 2, 2017. The landlord testified that the mailing was delivered as it was not returned unclaimed. Taking into account the oral testimony of the landlord and in accordance with sections 89 and 90 of the Act, I find that the tenant has been

deemed served with the landlord's Application and Notice of Hearing as of March 7, 2017, the fifth day after the registered mailing.

Issues to be Decided

- Is the landlord entitled to a monetary order for unpaid rent?
- Is the landlord entitled to a monetary order to keep all or part of the security deposit?
- Is the landlord entitled to recovery of the filing fee paid for this application from the tenant?

Background and Evidence

The undisputed evidence of the landlord established that the tenant entered into a fixed term tenancy starting on December 1, 2015 and ending on February 28, 2017. Rent in the amount of \$2,900.00 is due on the first day of each month. The tenant provided a security deposit in the amount of \$1,400.00 pursuant to a previous tenancy agreement entered into prior to this fixed term tenancy.

The evidence of the landlord established that the fixed term tenancy agreement provides for a \$25.00 service charge for late rent payments and a \$25.00 NSF charge for cheques that are returned.

The landlord testified that the tenant did not pay rent in the amount of \$2,900.00 that was due for the month of February 2017.

The landlord issued a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "10 Day Notice") on February 2, 2017. The landlord testified that the 10 Day Notice was sent to the tenant at the rental unit by registered mail on February 2, 2017. Based upon the testimony of the landlord and in accordance with sections 88 and 90 of the *Act*, I find that the tenant has been deemed served with the 10 Day Notice as of February 7, 2017, the fifth day after the registered mailing. As the landlord has withdrawn their application for an order of possession, I find that I do not need to consider the 10 Day Notice further, except in regard to the rent money still owed to the landlord.

The landlord testified that the tenant did not pay the rent arrears after having been served with the 10 Day Notice.

The landlord indicated that there was a typo with respect to the amount of the unpaid rent that the landlord had claimed in their application. The landlord indicated that they are seeking unpaid rent for the month of February 2017 in the amount of \$2,900.00 and not \$2,800.00. The landlord is requesting to amend their application to reflect the full amount of the rent that was due for the month of February 2017.

The landlord is seeking payment from the tenant for the \$25.00 late rent payment charge. The landlord is also seeking the \$25.00 NSF charge for the tenant's February 2017 rent cheque that was returned.

The landlord is seeking to recover the \$100.00 filing fee for their application from the tenant.

The landlord is requesting to apply the tenant's security deposit in the amount of \$1,400.00 against the amounts owed by the tenant

Based upon the foregoing, the landlord is seeking a total monetary order in the amount of \$1,650.00.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows.

As the tenant was served with the Application and Notice of Hearing and did not attend the hearing, I consider this matter to be unopposed by the tenant. As a result, I find the landlord's application is fully successful as I find the evidence supports the landlord's claim and is reasonable.

I find that the tenant was required to pay rent in the amount of \$2,900.00 for the month of February 2017. I find that the tenant did not pay the rent that was due. I allow the landlord's request to amend their application to include the full amount of unpaid rent in the amount of \$2,900.00. I find that the tenant is not prejudiced by the landlord's request to amend their application in this regard as the tenant knew or ought to have known that they were required to pay the full amount of rent when due, which is \$2,900.00.

I find that the landlord is entitled to charge a \$25.00 fee for late payment of rent pursuant to the tenancy agreement. As the tenant's rent for the month of February 2017 is late, I find that the landlord is entitled to recover the \$25.00 fee from the tenant for the late payment of rent.

I find that the landlord is entitled to charge the tenant a \$25.00 fee for NSF cheques pursuant to the tenancy agreement. I accept the evidence of the landlord that the tenant's cheque for the month of February 2017 was returned. Therefore, I find that the landlord is entitled to the \$25.00 NSF charge from the tenant.

As the landlord's application is successful, I find that the landlord is entitled to recover the \$100.00 filing fee for their application from the tenant.

I allow the landlord to apply the tenant's security deposit in the amount of \$1,400.00 against the amounts owed by the tenant.

Based upon the foregoing I find that the landlord is entitled to a monetary order in the amount of \$ 1,650.00 as follows:

Unpaid Rent for February 2017	\$2,900.00
Fee for Late Payment of Rent	\$ 25.00
NSF Charge	\$ 25.00
Filing Fee	\$ 100.00
Less Security Deposit	\$1,400.00
Total Monetary Order	\$1,650.00

Conclusion

The landlord's application is successful.

The landlord is granted a monetary Order in the amount of \$1,650.00 which must be served on the tenant as soon as possible. Should the tenant fail to comply with this monetary Order, it may be filed in the Small Claims Division of the Provincial Court and enforced as an Order 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: March 24, 2017

Residential Tenancy Branch