



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNDC, MNSD, FF

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- an order of possession for unpaid rent pursuant to section 55;
- a monetary order for unpaid rent, and for money owed or compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("Regulation") or tenancy agreement pursuant to section 67;
- authorization to retain all or a portion of the tenants' security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover the filing fee for this application from the tenants pursuant to section 72.

The tenants did not participate in the conference call hearing, which lasted approximately 10 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 February 14, 2017 she forwarded the landlord's application for dispute resolution hearing package via registered mail to each of the tenants. The landlord provided Canada Post tracking numbers 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 February 19, 2017, the fifth day after their registered mailing.

Preliminary Issue – Previous Decision

A previous Decision was rendered on March 1, 2017 regarding this tenancy. The file number has been included on the front page of this Decision for ease of reference. The Arbitrator found, based on the evidence presented that rent was not paid with five days of receipt of the 10 Day Notice. The Arbitrator therefore issued a two day order of

possession. Consequently, the landlord no longer requires an order of possession and this portion of the landlord's claim is dismissed without leave to reapply.

Issue(s) to be Decided

Is the landlord entitled to a monetary order for unpaid rent, and for money owed or compensation for damage or loss under the *Act*, *Regulation* or tenancy agreement?

Is the landlord authorized to retain all or a portion of the tenants' security deposit in partial satisfaction of the monetary order requested?

Is the landlord authorized to recover the filing fee for this application from the tenants?

Background and Evidence

As per the submitted tenancy agreement and testimony of the parties, the tenancy began on November 4, 2016 on a fixed term until October 31, 2017. Rent in the amount of \$2,600.00 is payable on the first of each month. The tenants remitted a security deposit in the amount of \$1,300.00 at the start of the tenancy. The tenants continue to reside in the rental unit.

The landlord seeks a monetary order of \$5,200.00 for unpaid February and March 2017 rent. The landlord claimed that the tenants have not paid any rent for the above two months.

The landlord is also seeking \$48.00 for the service fees charged by her bank for returned November, December and January rent cheques.

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*, *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 current rent for this unit is \$2,600.00. I find the landlord provided undisputed evidence that the tenant failed to pay February and March rent. Therefore, I find that the landlord is entitled to \$5,200.00 in rent.

Section 7 of the *Regulation* establishes that a landlord may charge a service fee charged by a financial institution to the landlord for the return of a tenant's cheque. I find the landlord has provided insufficient documentary evidence to establish the bank charged a total of \$48.00 in service fees. Accordingly, I dismiss this portion of the landlord's monetary claim.

As the landlord was partially successful in this application, I find that the landlord is entitled to recover \$50.00 of the \$100.00 filing fee paid for the application, for a total award of \$5,250.00.

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 \$1,300.00 in partial satisfaction of the monetary award and I grant an order for the balance due \$3,950.00.

Conclusion

I issue a monetary order in the landlord's favour in the amount of \$3,950.00 against the tenants.

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 10, 2017

Residential Tenancy Branch