



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FF, MNDC, MNR, MNSD, OPL,

Introduction

This hearing convened as a result of a Landlord's Application for Dispute Resolution filed October 20, 2016 wherein the Landlord requested monetary compensation from the Tenant, authority to retain the security deposit and to recover the filing fee.

The hearing was conducted by teleconference on April 25, 2017 at 3:00 p.m. Only the Landlord's agent, B.D., called into the hearing. She gave affirmed testimony and was provided the opportunity to present the Landlord's evidence orally and in written and documentary form, and to make submissions to me.

B.D. testified that she served the Tenant with the Notice of Hearing and the Application on October 24, 2016 by registered mail to the address provided by the Tenant. A copy of the registered mail tracking number is provided on the unpublished cover page of this my Decision. B.D. testified that the registered mail package was not retrieved by the Tenant and was instead returned to the Landlord.

Residential Tenancy Policy Guideline 12—Service Provisions provides that service cannot be avoided by refusing or failing to retrieve registered mail:

Where a document is served by registered mail, the refusal of the party to either accept or pick up the registered mail, does not override the deemed service provision. Where the registered mail is refused or deliberately not picked up, service continues to be deemed to have occurred on the fifth day after mailing.

Pursuant to section 90 of the *Residential Tenancy Act* documents served by registered mail are deemed served five days later; accordingly, I find the Tenant was duly served as of October 29, 2016 and I proceeded with the hearing in their absence.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, not all details of the Landlord's submissions and or arguments are reproduced here; further, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

1. Is the Landlord entitled to monetary compensation from the Tenant?
2. Should the Landlord be authorized to retain the Tenant's security deposit?
3. Should the Landlord recover the filing fee?

Background and Evidence

B.D. testified that monthly rent was payable in the amount of \$1,700.00 and the Tenant paid a \$700.00 security deposit.

B.D. testified that the Landlord served a 2 Month Notice to End Tenancy for Landlord's Use with an effective date of September 1, 2016; a copy of the Notice was provided in evidence. B.D. confirmed that the Tenant received a free month's rent as per the Notice, but did not move out of the rental unit on September 21, 2016. B.D. stated that the Landlord then paid the new owner \$1,500.00 for the Tenant over-holding the tenancy as he wanted to make sure the sale completed.

At the time the tenancy ended the Tenant also failed to pay the outstanding electrical bill and gas bill. Copies of these invoices were introduced in evidence.

Introduced in evidence was a copy of the Monetary Orders Worksheet wherein the Landlord indicated they requested \$2,204.00 in compensation for the following:

Unpaid electrical bill	\$591.66
Unpaid gas bill	\$101.00
Unpaid rent for	\$1,500.00
Filing fee	\$100.00
Cost of registered mail	\$11.34
TOTAL	\$2,204.00

Analysis

In a claim for damage or loss under section 67 of the *Act* or the tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities. In this case, the Landlord has the burden of proof to prove their claim.

Section 7(1) of the *Act* provides that if a Landlord or Tenant does not comply with the *Act*, regulation or tenancy agreement, the non-complying party must compensate the other for damage or loss that results.

Section 67 of the *Act* provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

I accept the Landlord's undisputed evidence that the Tenant was required to pay the electrical and gas utility and failed to pay as required. I therefore award the Landlord recovery of the amounts claimed.

I also accept B.D.'s testimony that the Tenant failed to move out on September 1, 2016 as required by the 2 Month Notice to End Tenancy for Landlord's Use. I further accept her evidence that the Landlord paid the new owners \$1,500.00 as compensation for the Tenant over-holding his tenancy and I award the Landlord recovery of this amount.

As explained during the hearing, registered mail costs are not recoverable.

The Landlord, having been substantially successful, is entitled to recover the \$100.00 filing fee.

Conclusion

I therefore award the Landlord compensation in the amount of **\$2,192.66** for the following:

Unpaid electrical bill	\$591.66
Unpaid gas bill	\$101.00
Unpaid rent for September 2016	\$1,500.00
Filing fee	\$100.00
TOTAL	\$2,192.66

I grant the Landlord authority to retain the Tenant's \$700.00 security deposit and I grant the Landlord a Monetary Order in the amount of **\$1,492.66**.

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: April 25, 2017

Residential Tenancy Branch