



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding MARINE GATEWAY RES C/O WARRINGTON PCI MGMT.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNSD, MND, MNR, OPN, FF

Introduction

On November 7, 2016, the Landlord submitted an Application for Dispute Resolution for an order of possession; for a monetary order for unpaid rent or utilities and damage; to keep the security deposit; and to recover the cost of the filing fee. The matter was set for a conference call hearing.

The Landlord's agent ("the Landlord") attended the teleconference hearing; however, the Tenants did not. The Landlord provided affirmed testimony that the Tenants were served with the Notice of Hearing on November 16, 2016 by registered mail. The Landlord testified that the Notice of Hearing was sent to the address that the Tenant's provided as their forwarding address. The Landlord provided copies of the registered mail receipts as proof of service. I find that both Tenants have been duly served with the Notice of Hearing in accordance with sections 89 and 90 of the Act.

The Landlord was provided the opportunity to present her evidence orally and in written and documentary form, and to make submissions at the hearing.

Preliminary and Procedural Matters

On February 2, 2017, the Landlord filed an amendment to the Application made on November 7, 2016. The Landlord increased the amount of the monetary claim to \$7,692.45 to account for an additional loss of rent. The Landlord testified that the amended Application was served to the Tenants by using Canada Post Registered Mail sent on January 27, 2017. The Landlord provided a copy of the registered mail receipts as proof of service. I find that both Tenants have been duly served with the amended Application in accordance with sections 89 and 90 of the Act.

The Landlord applied for an order of possession but testified that the Tenant vacated the unit at the end of October 2016. The Landlord's request for an order of possession is not needed and is dismissed.

The Landlord's monetary claim is limited to the amount listed in the amended Application that was served on the Tenants.

Issues to be Decided

- Is the Landlord entitled to a monetary order to recover unpaid rent?
- Is the Landlord entitled to keep the security deposit towards unpaid rent?
- Is the Landlord entitled to recover the cost of the filing fee?

Background and Evidence

The Landlord testified that the tenancy began on March 1, 2016, as a one year fixed term tenancy, to continue thereafter as a month to month tenancy. Rent in the amount of \$2,400.00 was to be paid to the Landlord on the first day of each month. The Tenants were to pay a parking fee of \$150.00 per month. The Tenants paid the Landlord a security deposit of \$1,200.00 and a pet damage deposit of \$1,200.00. The Landlord testified that hydro costs were the responsibility of the Tenants.

The Landlord provided a copy of the residential tenancy agreement.

The Landlord provided a copy of a parking stall rental agreement. The agreement indicates that the parking fee of \$150.00 is due on or before the first day of each month. The agreement states that it is on a month to month basis and may be cancelled by either party with one full months' notice.

The Landlord testified that the Tenant gave notice to move out for October 31, 2016.

The Landlord testified that the rental unit remained un-rented until February 1, 2017. The Landlord testified that the unit was advertised on a local website for rent immediately after the Tenants' provided notice they were moving out. The Landlord testified that the unit was advertised at the same amount of rent. The Landlord testified that the rent was lowered by \$200.00 per month because it was difficult to find someone to rent it.

The Landlord provided a copy of a payment ledger showing that rent was not received from the Tenant for the months of November 2016; December 2016; and January 2017. The Ledger indicates that the rent cheque for November 2016, was returned to the Landlord for non-sufficient funds.

The Landlord testified that the Tenants entered into a fixed term tenancy agreement and are responsible to pay the rent until the unit was re-rented. The Landlord testified that they suffered a loss of rent for the following months:

- November 2016, in the amount of \$2,400.00.
- December 2016, in the amount of \$2,400.00.
- January 2017, in the amount of \$2,400.00.

The Landlord seeks a monetary order for unpaid rent in the amount of \$7,200.00

The Landlord is also seeking \$450.00 for unpaid parking fees for November 2016; December 2016; and January 2017.

The Landlord is seeking to recover the \$25.00 NSF bank fee for the November rent payment that bounced.

The Landlord is seeking to recover \$17.45 for the Tenant portion of a hydro bill. The Landlord referred to the payment ledger that shows the Tenant's failed to pay for some use of the hydro.

The Landlord is requesting to keep the security deposit and pet damage deposit in the amount of \$2,400.00 in partial satisfaction of the claim. The Landlord applied to keep the deposits seven days after the Tenants moved out of the rental unit.

Analysis

Based on the evidence before me, the testimony of the Landlord, and on a balance of probabilities, I find that both Tenants were served with Notice of the Hearing and failed to appear.

I find that the Tenants failed to pay the rent that due under the fixed term tenancy agreement for the months of November 2016; December 2016; and January 2017. I find that the Tenants are responsible to pay the monthly rent that was due until the unit was re-rented. I find that the Landlord made an effort to re-rent the unit by advertising it for rent on a local rental website.

I find that the Tenants owe the Landlord \$7,200.00 for the loss of rent suffered by the Landlord for the months of November 2016; December 2016; and January 2017.

I dismiss the Landlord's claim for \$450.00 for unpaid parking fees. I find that when the Tenants gave notice to leave, that was sufficient notice to end the parking agreement.

I grant the Landlord the \$25.00 amount for the NSF fee and the \$17.45 for unpaid hydro.

I order that the Landlord can keep the security deposit in the amount of \$2,400.00 in partial satisfaction of the claim for unpaid rent.

Section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. I order the Tenants to repay the \$100.00 fee that the Landlord paid to make application for dispute resolution.

I find that the Landlord has established a total monetary claim of \$7,342.45 comprised of \$7200.00 in unpaid rent for the above mentioned dates, \$25.00 for a NSF fee; \$17.45 for unpaid hydro; and the \$100.00 fee paid by the Landlord for this hearing. After offsetting the security deposit of \$2,400.00 towards the claim of \$7,342.45, I find that the Landlord is entitled to a monetary order in the amount of \$4,942.45.

This monetary order may be filed in the Provincial Court (Small Claims) and enforced as an order of that court. The Tenants are cautioned that costs of such enforcement are recoverable from the Tenants.

Conclusion

The Tenants moved out of the rental unit prior to the end to of the fixed term tenancy agreement. The Tenants are responsible to pay for the loss of rent suffered by the Landlord.

I find that the Landlord has established a total monetary claim of \$7,342.45.

I order that the Landlord can keep the security deposit in the amount of \$2,400.00 in partial satisfaction of the claim.

The Landlord is granted a monetary order in the amount of \$4,942.45.

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: May 15, 2017

Residential Tenancy Branch