



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding STRATTON VENTURES LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNR, MNSD, FF

Introduction

This hearing dealt with a landlord's application for a Monetary Order for unpaid rent and authorization to retain the tenant's security deposit. The tenant did not appear at the hearing. The landlord provided a registered mail receipt, including tracking number, as proof the hearing documents were sent to the tenant on June 1, 2017. The registered mail was successfully delivered on June 2, 2017 to the tenant's forwarding address, which was care of her mother's address. I was satisfied the tenant was duly served with notification of this proceeding and I continued to hear from the landlord's agents without the tenant present.

The landlord's agents requested the application be amended to name the corporate landlord only and remove the former manager as a named party. The application was amended accordingly.

Issue(s) to be Decided

1. Has the landlord established an entitlement to recover the amounts claimed against the tenant?
2. Is the landlord authorized to retain the tenant's security deposit?

Background and Evidence

The tenancy started on December 1, 2016 on a month to month basis. The landlord collected a security deposit of \$425.00 and the tenant was required to pay rent of \$850.00 on the first day of every month.

The tenant failed to pay all of the rent that was due for February 2017 and did not pay any rent for March 2017 or April 2017. On April 5, 2017 the landlord posted a 10 Day

Notice to End Tenancy for Unpaid Rent on the door of the rental unit indicating rent of \$2,051.75 was outstanding. The 10 Day Notice had a stated effective date of April 18, 2017 and the tenant vacated the rental unit in mid-April 2017. Upon inspection of the rental unit, the landlord determined the rental unit required additional cleaning and the carpets were dirty, as reflected on the move-out inspection report.

By way of this application, the landlord seeks to recover unpaid rent of \$206.75 for February 2017, \$850.00 for March 2017, and \$850.00 for April 2017 in the sum of \$1,906.75.

The landlord also seeks a \$45.00 "NSF fee"; however, I noted that the landlord did not provide a copy of the addendum to the tenancy agreement, evidence to demonstrate a rent cheque was dishonoured, or evidence to show that the landlord was charged a NSF by its financial institution because of the tenant's dishonoured payment.

The landlord also requested compensation of \$50.00 for two hours of cleaning; \$65.00 for carpet cleaning; and, \$75.00 for garbage removal. The landlord's agents explained that the cleaning was done by in-house staff persons; that the carpets were cleaned by a carpet cleaning company but that no receipt was included in evidence; and, that the landlord seeks the "standard charge" for the garbage dumping charge. I noted that the move-out inspection report does not indicate that garbage or abandoned property was left behind, only that cleaning was required, and there were no photographs of garbage or abandoned property provided.

Analysis

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in section 7 and 67 of the Act. Accordingly, an applicant must prove the following:

1. That the other party violated the Act, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

Upon consideration of everything before me, I provide the following findings and reasons.

Section 26 of the Act provides that a tenant must pay rent when due under the terms of their tenancy agreement. The tenancy agreement before me provides that the tenant was obligated to pay rent of \$850.00 on the first day of every month. I accept the landlord's unopposed submissions that the tenant failed to pay rent of \$206.75 for February 2017, \$850.00 for March 2017 and \$850.00 for the month of April 2017 especially when I consider that the sum of these amounts is less than that appearing on the 10 Day Notice. Therefore, I award the landlord loss of rent in the amount claimed of \$1,906.75.

Section 7 of the Residential Tenancy Regulations permits a landlord to charge a tenant a \$25.00 administrative fee for returned cheques provided such a term is included in the tenancy agreement. The tenancy agreement before me does not include a term that provides for NSF fees. The tenancy agreement does indicate that there is an Addendum; however, the landlord did not provide me with a copy of the Addendum. Accordingly, I find I am unable to verify that the tenancy agreement provides for an NSF fee term by way of the Addendum. Section 7 of the Regulations also provides that a landlord may recover the fee the landlord is charged by its financial institution if a tenant's rent cheque is dishonoured; however, the landlord did not provide evidence to demonstrate the tenant's cheque was dishonoured and that the landlord was charged a fee by its financial institution as a result. Therefore, I find the landlord failed to provide sufficient evidence to demonstrate an entitlement to charge the tenant with an NSF fee of \$45.00 as requested.

Section 37 of the Act requires that the tenant leave the rental unit reasonably clean, undamaged and vacant at the end of the tenancy. The move-out inspection report provided to me indicates the tenant left the rental unit dirty in a number of areas. I find I am satisfied by the unopposed evidence and I find it reasonable that the landlord's staff persons spent two hours cleaning and I grant the landlords' request to recover \$50.00 from the tenant for cleaning.

Although the condition inspection report indicates the carpeting was dirty, the landlord paid a third party contractor to clean the carpets, but did not include the receipt as evidence. I find it reasonable to expect that where a receipt is available it would be included as evidence to corroborate the amount claimed. I dismiss this portion of the landlord's claim since the landlord did not provide evidence that would verify the amount claimed for carpet cleaning.

Finally, the landlord seeks to recover garbage removal costs of \$75.00 yet the move-out inspection report does not indicate any garbage was left behind and there is no other corroborating evidence such as photographs or a garbage removal receipt to support the tenant owes the landlord \$75.00 for garbage removal. Therefore, I deny this portion of the landlord's claim.

The landlord's claim, overall, had merit and I award the landlord recovery of the \$100.00 filing fee paid for this application.

I authorize the landlord to retain the tenant's security deposit in partial satisfaction of the amounts awarded to the landlord.

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

Unpaid rent	\$1,906.75
Cleaning	50.00
Filing fee	100.00
Less: security deposit	<u>(425.00)</u>
Monetary order	\$1,631.75

Conclusion

The landlord is authorized to retain the tenant's security deposit and has been provided a Monetary Order for the balance of \$1,631.75 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: November 24, 2017

Residential Tenancy Branch