



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 loss pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38;
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The hearing was conducted by conference call. The tenants did not attend this hearing, although I waited until 11:10 a.m. in order to enable the tenants to connect with this teleconference hearing scheduled for 11:00 a.m. The landlord attended the hearing and was given a full opportunity to provide affirmed testimony, to present evidence and make submissions.

On September 12, 2017 copies of the Application for Dispute Resolution and Notice of Hearing were sent to both the tenants by registered mail. The landlord provided registered mail tracking numbers in support of service.

Based on the above evidence, I am satisfied that the tenants were deemed served with the Application for Dispute Resolution and Notice of Dispute Resolution Hearing pursuant to sections 89 & 90 of the Act. The hearing proceeded in the absence of the tenants.

Preliminary Issue – Amendment to Landlord's Application

Paragraph 64(3)(c) of the Act allows me to amend an application for dispute resolution.

At the hearing, the landlord advised that it had successfully obtained an order of possession and a monetary order for unpaid rent through a Direct Request Proceeding on October 24, 2017. As such the landlord amended this application to remove the application for an order of possession and unpaid rent.

Issues

Is the landlord entitled to a monetary award for loss?

Is the landlord entitled to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary award requested?

Is the landlord entitled to recover the filing fee for this application from the tenant?

Background and Evidence

The tenancy began on February 1, 2017 with a monthly rent of \$995.00 plus \$10.00 for parking payable on the 1st day of each month. The tenants paid a security deposit of \$497.50 at the start of the tenancy which the landlord continues to hold. The tenancy was for a 1 year fixed term set to expire on January 31, 2018.

The landlord's monetary claim is for unpaid parking in the amount of \$60.00, NSF/Late fees in the amount of \$125.00 and liquidated damages in the amount of \$497.50.

The landlord testified the tenants requested an additional parking spot effective August 1, 2017 but failed to pay the \$20.00/month parking fee for the months of August, September and October 2017.

The landlord testified a NSF charge of \$50.00 was incurred in February 2017 and is claiming a \$25.00 late fee in August, September and October 2017. The landlord submits the addendum to the tenancy agreement which allows for a NSF fee and late fees.

The landlord is claiming \$497.50 in liquidated damages for the tenants breaching the fixed term lease agreement. The landlord submits the tenancy agreement addendum stipulating the requirement for liquidated damages.

Analysis

I accept the landlord's uncontested evidence and find that the landlord suffered a loss for unpaid parking, NSF and late fees, and liquidated damages as claimed. I accept the landlord's claim for loss of \$682.50.

As the landlord was successful in this application, I find that the landlord is entitled to recover the \$100.00 filing fee paid for this application for a total monetary award of \$782.50.

The landlord continues to hold a security deposit of \$497.50. I allow the landlord to retain the security deposit in partial satisfaction of the monetary award pursuant to section 38 of the Act.

Therefore, I find that the landlord is entitled to a Monetary Order in the amount of \$285.00.

Conclusion

Pursuant to section 67 of the *Act*, I grant the landlord a Monetary Order in the amount of \$285.00. Should the tenant fail to comply with this Order, this Order 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: December 04, 2017

Residential Tenancy Branch