



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MND, 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 sections 46 and 55;
- a monetary order for unpaid rent, damage to the unit or property and for money owed or compensation for damage or loss under the *Act*, 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 attend this hearing, although I waited until 11:12 a.m. in order to enable the tenant to connect with this teleconference hearing scheduled for 11:00 a.m.

The landlord's agent (the landlord) attended the hearing and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

Rules 7.1 and 7.3 of the Residential Tenancy Branch Rules of Procedure provides as follows:

*The hearing must commence at the scheduled time unless otherwise decided by the arbitrator.
The arbitrator may conduct the hearing in the absence of a party and may make a decision or dismiss the application, with or without leave to re-apply.*

The landlord gave undisputed affirmed testimony that the Application for Dispute Resolution (the Application) and evidentiary package was sent to each tenant on September 20, 2017. The landlord provided copies of the Canada Post tracking numbers to confirm these registered mailings. In accordance with sections 88, 89 and 90 of the *Act*, I find that the tenants were deemed served with the Application and evidentiary package on September 25, 2017.

The landlord gave undisputed affirmed testimony that a 10 Day Notice to End Tenancy (the 10 day Notice) was posted to the door of the rental unit on September 07, 2017. In accordance with sections 88 and 90 of the *Act*, I find the 10 Day Notice was deemed served to the tenants on September 10, 2017, three days after its posting.

The landlord testified that the tenants have moved out of the rental unit and that the landlord is only seeking compensation for September 2017 rent, a late fee for September 2017 rent, a fee charged by a financial institution for a check with non-sufficient funds (N.S.F.) and the filing fee as all indicated on the Application in the Details of the Dispute. The landlord requested to withdraw their application for an Order of Possession and monetary claim for damage to the unit or property.

The landlord's application for an Order of Possession and for compensation for damage to the unit or property is withdrawn.

Issues(s) to be Decided

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

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

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

Background and Evidence

The landlord gave written evidence that this tenancy began on November 01, 2015, with a monthly rent of \$980.00, due on the first day of each month. The landlord testified that they continue to retain a security deposit in the amount of \$490.00. Term 10 of the tenancy agreement allows for a \$25.00 administrative late fee.

The landlord gave undisputed affirmed testimony that the monthly rent was increased to \$1,008.42 effective as of November 01, 2016. The landlord testified that the tenants did not pay the monthly rent for September 2017, and that the landlord incurred a charge in the amount of \$25.00 from their financial institution for an N.S.F. cheque from the tenants. The landlord submitted that their tenancy agreement allows for the recovery of a late fee in the amount of \$25.00 for any late payment of the monthly rent.

Analysis

Section 26 of the *Act* requires a tenant to pay rent to the landlords, regardless of whether the landlords comply with the *Act*, regulations or tenancy agreement, unless the tenant has a right to deduct all or a portion of rent under the *Act*.

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party.

Section 7, subsections (c) and (d), of the *Residential Tenancy Regulations* allows for a landlord to recover a service fee charged by their financial institution and for a \$25.00 administrative fee for late payment of rent.

Based on the undisputed written evidence and affirmed testimony, I find that the landlord is entitled to a monetary award of \$1,058.42, for unpaid rent owing for this tenancy for September 2017 as well as for the N.S.F. fee and late rent administrative fee for September 2017.

As the landlord has been successful in this application, I allow them to recover their \$100.00 filing fee from the tenant. Pursuant to section 72 of the *Act*, I also allow the landlord to retain the tenants' security deposit plus applicable interest in partial satisfaction of the monetary award. No interest is payable over this period.

Conclusion

I grant a monetary Order in the landlord's favour under the following terms, which allows the landlords to recover unpaid rent, recover N.S.F. and administrative fees, recover the filing fee for this application and to retain the tenants' security deposit:

Item	Amount
Unpaid September 2017 Rent	\$1,008.42
N.S.F. fee for September 2017	25.00
Late Rent Administrative Fee September 2017	25.00
Less Security Deposit	-490.00
Filing fee for this Application	100.00
Total Monetary Order	\$668.42

The landlord is provided with these Orders in the above terms and the tenant(s) must be served with this Order as soon as possible. Should the tenant(s) fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders 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: January 08, 2018

Residential Tenancy Branch