



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **Landlord** – Application filed on October 18, 2017 - OPRM-DR, FFL
Application filed on October 19, 2017 - MNDL, MNRL-S, FFL
Tenant – CNR, RP

Introduction

This hearing dealt with an application by both parties pursuant to the *Residential Tenancy Act* ("Act").

The landlord sought:

- an Order of Possession for unpaid rent pursuant to sections 46 and 55;
- a monetary order for unpaid rent and for damage to the unit or property 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; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The tenant sought:

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46; and
- an order to the landlord to make repairs to the rental unit pursuant to section 33.

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

The landlord testified that the Landlord's Applications for Dispute Resolution (the Application) and evidentiary packages were sent to the tenant by way of registered mail on October 25, 2017. The landlord provided a copy of the Canada Post Tracking Number to confirm this registered mailing. In accordance with sections 88, 89 and 90 of

the *Act*, I find that the tenant was deemed served with the Applications and evidentiary packages on October 30, 2017, five days after their registered mailing.

At the outset of the hearing the landlord testified that the tenant moved out of the rental unit in October 2017.

Issue(s) to be Decided

Is the landlord entitled to a monetary award for unpaid rent and for damage to the unit or property?

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

Is the landlord entitled to recover the filing fee for both of the landlord's applications from the tenant?

Background and Evidence

The landlord gave written evidence that this tenancy began on August 25, 2017, with a monthly rent of \$1,700.00, due on the first day of the month. The landlord testified that the tenant did not pay a security deposit. The landlord also provided a signed addendum which indicates a \$20.00 administrative late fee and \$20.00 for fees that are charged from their financial institution for cheques that are returned for non-sufficient funds (N.S.F.).

The landlord testified that the tenant vacated the rental unit in October 2017. The landlord stated that they filed their first application on October 18, 2017, seeking the pro-rated rent for the tenant's early move into the unit from August 25, 2017, to August 31, 2017, the unpaid rent for October 2017 in the amount of \$1,700.00, a \$20.00 administrative fee and a \$20.00 N.S.F. fee.

The landlord also testified that they filed a second application on October 19, 2017, seeking compensation for damage to the rental unit and for strata fines charged to them, which was joined to their first application filed on October 18, 2017, and the tenant's application. The landlord stated they did not have their evidence for this Application ready to submit to the Residential Tenancy Branch at the time of the hearing.

Analysis

Rules 7.1 and 7.3 of the Rules of Procedure provides as follows:

Commencement of the hearing - 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.

In the absence of any evidence or submissions from the tenant, I order the Tenant's Application for Dispute Resolution (Tenants' Application) dismissed, without liberty to reapply.

Pursuant to section 55 of the *Act*, if I dismiss the tenant's application to cancel a notice to end tenancy, the landlord is entitled to an order of possession if the notice meets the requirements of section 52 of the *Act*. The landlord testified that the tenant has vacated the rental unit and they do not require an Order of Possession.

Based on the landlord's testimony, I find that the tenant did not pay a security deposit and for this reason the landlord's Application to retain the security deposit is dismissed, without leave to reapply.

I further find that the landlord's monetary Application filed on October 19, 2017, for damages was prematurely joined to be heard with the landlord's Application for an Order of Possession and the unpaid rent.

For this reason, I dismiss the landlord's Application that was filed on October 19, 2017, for damages to the unit, with leave to reapply.

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 \$20.00 administrative fee for late payment of rent.

Based on the written evidence and undisputed affirmed testimony, I find that the landlord is entitled to a monetary award of \$2,123.80 for unpaid rent owing for this tenancy for August 2017, October 2017, the administrative late fee and the fee charged by the landlord's financial institution for an N.S.F. cheque.

As the landlord has been successful in their first application, I allow them to recover their filing fee from the tenant.

Conclusion

Pursuant to section 67 of the *Act*, I grant a monetary Order in the landlord's favour under the following terms, which allows the landlord to recover unpaid rent, to retain the tenant's security deposit and to recover the filing fee:

Item	Amount
Unpaid August 2017 Rent	\$1,700.00
Unpaid October 2017 Rent	383.80
Administrative Late Fee	20.00
N.S.F Fee charged by Financial Institution	20.00
Filing Fee for this application	100.00
Total Monetary Order	\$2,223.80

The landlord is provided with this Order 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 this Order, this Order 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 10, 2018

Residential Tenancy Branch