



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FF OPC MNDC CNC

Introduction

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

The landlord sought:

- a monetary order for money owed under the tenancy agreement pursuant to section 67 of the *Act*;
- an order of possession for Cause pursuant to section 47 of the *Act*; and
- a return of the filing fee pursuant to section 72 of the *Act*.

The tenant sought:

- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause pursuant to section 47 of the *Act*; and
- a return of the filing fee pursuant to section 72 of the *Act*.

Only the landlord, A.K. attended the hearing. The landlord was given a full opportunity to be heard, to present their testimony and to make submissions.

Following opening remarks, the landlord said she was only seeking the monetary award she had applied for. The landlord explained that she had been granted an Order of Possession on February 26, 2018 by way of Direct Request Proceedings and thus was no longer pursuing her application for an Order of Possession.

The landlord said that she sent a copy of her application for dispute resolution and evidentiary package to the tenant by way of Canada Post Registered Mail on February 15, 2018. A copy of the Canada Post tracking number was provided to the hearing as part of the landlord's evidentiary package. I find that pursuant to sections 88, 89 & 90 of the *Act* that the tenant is deemed served with this application on February 20, 2018, five days after its mailing.

The landlord asked if she could amend her application to include unpaid rent for the month of March. She said that the tenant remained in the rental unit and had failed to pay rent in its entirety for March 2018. Pursuant to section 64(3)(c) of the *Act*, I amend the landlord's application to reflect the unpaid rent.

Issue(s) to be Decided

Is the landlord entitled to a monetary award?

Can the landlord recover the filing fee?

Background and Evidence

The landlord provided a detailed evidentiary package which showed that this tenancy began on April 1, 2014. Rent began at \$1,395.00 and rose to its current rate of \$1,488.00. A security deposit of \$700.00 continues to be held by the landlord.

The landlord said she was seeking a monetary award of \$3,076.00. She said this represented unpaid rent for February and March 2018, along with NSF and late fees of \$25.00 each per month.

Analysis

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. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. In this case, the onus is on the landlord to prove her entitlement to a monetary award.

Based on the landlord's undisputed testimony, and after having reviewed the rental ledgers submitted to the hearing by the landlord, I am satisfied that the landlord has sufficiently demonstrated that rent remains unpaid for both February and March 2018. I allow the landlord to collect the entire amount sought in her application for a monetary award. Furthermore, I note that the tenancy agreement entered into between the parties requires a tenant to pay both NSF and late fees, if rent is accepted after the date on which it is due. I allow the landlord under section 67 to collect these items.

Using the offsetting provision contained in section 72 of the *Act*, I allow the landlord to retain the tenant's security deposit as partial relief for the monetary award. As the landlord was successful, she may recover the \$100.00 filing fee from the tenant.

Conclusion

I issue a Monetary Order in the landlord's favour in the amount of \$2,476.00 against the tenant based on the following monetary awards:

ITEM	AMOUNT
Unpaid rent for January 2018	\$1,488.00
Unpaid rent for February 2018	1,488.00
Return of Filing Fee	100.00
Return of NSF and Late Fee (\$25.00 each x 4)	100.00
Less Security Deposit	(-\$700.00)
TOTAL =	\$2,476.00

The landlord is provided with a Monetary Order in the above terms and the tenant must be served with this Order as soon as possible. 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.

The landlord's application for an Order of Possession is withdrawn.

The tenant's application is dismissed in its entirety without leave to reapply.

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: March 08, 2018

Residential Tenancy Branch