



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, FF

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the Act) for:

- a monetary order for unpaid rent 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 its filing fee for this application from the tenant pursuant to section 72.

Both parties attended the hearing via conference call and provided affirmed testimony. The landlord's agent (the landlord) stated that the tenant was served with the notice of hearing package via Canada Post Registered Mail on January 13, 2018, but was returned by Canada Post as "unclaimed" after attempts of service leaving a notice to pick up the package. The tenant argued that he was not properly served with the notice of hearing package, but confirmed receiving the notice of attempted service by Canada Post. The tenant stated that when he did go to pick up the package at Canada Post, the package was returned to the sender. The tenant clarified that he discovered the hearing details after he received an email from the Residential Tenancy Branch regarding the submissions of evidence.

I accept the undisputed affirmed testimony of both parties and find that the landlord did properly serve the tenant with the notice of hearing package as per sections 88 and 89 of the Act. Although the tenant failed to claim the package before it was returned to the landlord as "unclaimed", I find that the tenant is deemed served 5 days later on January 18, 2018 as per section 90 of the Act.

At the conclusion of the hearing the tenant provided a new mailing address as a result of vacating the premises between the time of the landlord's application and the date of the hearing.

Issue(s) to be Decided

Is the landlord entitled to a monetary order for unpaid rent and recovery of the filing fee?
Is the landlord entitled to retain all or part of the security deposit?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

This tenancy began on June 1, 2017 on a fixed term tenancy ending on May 31, 2018 and then thereafter on a month-to-month basis as shown by the submitted copy of the signed tenancy agreement dated May 23, 2017. The monthly rent was \$1,775.00 payable on the 1st day of each month. A security deposit of \$887.50 was paid. A parking agreement for \$100.00 per month payable on the 1st day of each month was made. A Bike Rack/Locker Agreement for \$10.00 per month payable on the 1st day of each month was made.

The landlord seeks a monetary claim of \$7,640.00 which consists of:

\$1,775.00	Unpaid Rent, October 2017
\$100.00	Unpaid Parking, October 2017
\$10.00	Unpaid Bike Rack/Locker, October 2017
\$50.00	NSF Charge(s) X2
\$1,775.00	Unpaid Rent, November 2017
\$100.00	Unpaid Parking, November 2017
\$10.00	Unpaid Bike Rack/Locker, November 2017
\$1,775.00	Unpaid Rent, December 2017
\$100.00	Unpaid Parking, December 2017
\$10.00	Unpaid Bike Rack/Locker, December 2017
\$25.00	NSF Charge
\$1,775.00	Unpaid Rent, January 2018

\$100.00	Unpaid Parking, January 2018
\$10.00	Unpaid Bike Rack/Locker, January 2018
\$25.00	NSF Charge

The landlord claims that the tenant failed to pay monthly rent, parking and bike rack/locker charges owed for October 2017, November 2017, December 2017 and January 2018. The landlord also claims that NSF charges were incurred in October 2017, December 2017 and January 2018.

The tenant provided affirmed testimony that rent, parking and a bike rack/locker charges for October 2017, November 2017, December 2017 and January 2018 were not paid. The tenant confirmed the NSF charges for the pre-authorized payment and the post-dated cheque charge for October 2017.

The tenant disputed the landlord's claim for the December 2017 and the January 2018 NSF charges, totalling \$50.00 (\$25.00 X 2). The tenant clarified that a request was made to cancel the automatic payments for these two months at the tenant's request. Both parties agreed that a written request to halt the automatic payments was given to the landlord. The landlord argued that this request was a one-time halt payment (November 2017), but that the automatic payments were automatic as per the automatic payment agreement made. The tenant argues that his understanding of the request was for all automatic payments to be stopped. Neither party was able to provide a copy of the written request.

The landlord has submitted in support of these claims:

- A copy of the signed tenancy agreement dated May 23, 2017
- A copy of a tenant statement of account for the period July 1, 2017 to January 5, 2018
- A copy of a parking addendum tenancy agreement
- A copy of a bike rack/locker tenancy agreement

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, I accept the undisputed affirmed evidence of both parties regarding the unpaid monthly rent, parking and bike rack/locker charges. The tenant provided undisputed affirmed testimony agreeing with the landlord that these charges were unpaid by the tenant for October 2017, November 2017, December 2017 and January 2018.

The tenant also acknowledged owing the NSF charges for October 2017. As such, I find that the landlord has established a claim for the following totaling, \$7,590.00.

\$1,775.00	Unpaid Rent, October 2017
\$100.00	Unpaid Parking, October 2017
\$10.00	Unpaid Bike Rack/Locker, October 2017
\$50.00	NSF Charge(s) X2
\$1,775.00	Unpaid Rent, November 2017
\$100.00	Unpaid Parking, November 2017
\$10.00	Unpaid Bike Rack/Locker, November 2017
\$1,775.00	Unpaid Rent, December 2017
\$100.00	Unpaid Parking, December 2017
\$10.00	Unpaid Bike Rack/Locker, December 2017
\$1,775.00	Unpaid Rent, January 2018
\$100.00	Unpaid Parking, January 2018
\$10.00	Unpaid Bike Rack/Locker, January 2018

On the remaining issue of NSF charges for December 2017 and January 2018 of \$50.00 (\$25.00 X2), I find on a balance of probabilities that I prefer the evidence of the landlord over that of the tenant. Although the tenant argued that a verbal request which was following by a hand written note requesting the cancelation of the automatic payments was made, this was disputed by the landlord. The landlord provided details that the request was for a one-time "halt payment" for the month of November 2017. The landlord stated that this is reflected in the statement of account provided. The tenant was unable to provide any supporting evidence that a stop all automatic

payments request was made. On this basis, I find that the landlord is entitled to recovery of the \$50.00 claim for NSF charges.

The landlord has established a total monetary claim of \$7,640.00.

The landlord having been successful is also entitled to recovery of the \$100.00 filing fee.

In offsetting this claim of \$7,740.00, I authorize the landlord to retain the \$887.50 security deposit in partial satisfaction of this claim.

Conclusion

The landlord is granted a monetary order for \$6,852.50.

This order must be served upon the tenant. Should the tenant fail to comply with the order, the order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of the 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: March 09, 2018

Residential Tenancy Branch