



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding OPTIMUM REALTY INC.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNR, MNDC, FF

Introduction

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

- a Monetary Order for unpaid rent and damages pursuant to section 67; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The tenant did not attend this teleconference hearing, which lasted approximately 15 minutes. The line remained open throughout the hearing. The corporate landlord was represented by its agent GT (the "landlord") who was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

The landlord testified that the landlord's application for dispute resolution dated October 3, 2017 was sent to the tenant at the forwarding address they provided by registered mail on that date. The landlord provided a Canada Post tracking number as evidence of service. I find that the tenant was deemed served with the landlord's application for dispute resolution and evidence package in accordance with sections 88, 89 and 90 of the Act on October 8, 2017, five days after mailing.

Issue(s) to be Decided

Is the landlord entitled to a monetary award as claimed?

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

Background and Evidence

The landlord provided undisputed testimony regarding the following facts. This tenancy began in March, 2017 and ended in September, 2017. The monthly rent was \$1,200.00 payable on the first of each month. A security deposit of \$600.00 was paid at the start of the tenancy. The tenant provided written authorization that the landlord may deduct

\$310.00 from the security deposit for the cost of cleaning. The landlord retains the \$290.00 balance of the deposit.

The tenancy agreement provides that a late fee of \$25.00 applies to all rent payments not paid by the first of the month. The tenancy agreement also provides that an NSF charge of \$25.00 applies to all payments not honoured by the financial institution.

The landlord testified that the tenant failed to pay the rent for September, 2017. The landlord said that the cheque provided by the tenant for rent payment was returned NSF. The landlord said that the arrear for this tenancy including unpaid rent, late fee and NSF fee is \$1,250.00. The landlord seeks a monetary award for that amount.

Analysis

Section 67 of the *Act* allows me to issue a monetary award for loss resulting from a party violating the *Act*, regulations or a tenancy agreement. 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 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. The claimant also has a duty to take reasonable steps to mitigate their loss.

The landlord provided undisputed evidence at this hearing as the tenant did not attend despite being served in accordance with the *Act*. I find that the tenant was obligated to pay rent in the amount of \$1,200.00. I accept the landlord's evidence that the tenant failed to pay rent for September, 2017 as the cheque they provided was returned NSF. I accept the landlord's evidence that the tenancy agreement provides that a NSF charge of \$25.00 and a late fee of \$25.00 apply to rent payments not made by the first of the month. I accept the undisputed evidence of the landlord that the arrear for this tenancy is \$1,250.00.

Based on the foregoing I issue a monetary award in the landlord's favour in the amount of \$1,250.00 pursuant to section 67 of the *Act*.

As the landlord's application was successful, the landlord is entitled to recover the \$100.00 filing fee for the cost of this application.

I accept the landlord's evidence that they hold \$290.00 of the security deposit for this tenancy.

In accordance with sections 38 and the offsetting provisions of 72 of the *Act*, I allow the landlord to retain the tenant's \$290.00 security deposit in partial satisfaction of the monetary award issued in the landlord's favour.

Conclusion

I issue a monetary order in the landlord's favour in the amount of \$1,060.00 under the following terms, which allows the landlord to recover unpaid rent, late fee, NSF fee and the filing fee for their application:

Item	Amount
Unpaid Rent September 2017	\$1,200.00
NSF Fee	\$25.00
Late Fee	\$25.00
Filing Fees	\$100.00
Less Security Deposit	-\$290.00
Total Monetary Order	\$1,060.00

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.

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: May 7, 2018

Residential Tenancy Branch