



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding MADISON TOWNHOMES MANAGEMENT
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDCT/FFT

Introduction

On May 10, 2018, the Tenant submitted an Application for Dispute Resolution under the *Residential Tenancy Act* (the “Act”) requesting a Monetary Order for compensation from the Landlord, and to recover the cost of the Filing Fee. The matter was set for a participatory hearing via conference call.

The Landlord and Tenant attended the hearing and provided affirmed testimony. They were provided the opportunity to present their relevant oral, written and documentary evidence and to make submissions at the hearing. The parties testified that they exchanged the documentary evidence that I have before me.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

Should the Tenant receive compensation from the Landlord?
Should the Tenant be reimbursed for the Filing Fee?

Background and Evidence

The Tenant and the Landlord agreed that the tenancy began on May 1, 2017, is currently a month-to-month tenancy and that the rent of \$1,350.00 is due on the first of each month.

The Tenant testified that she always paid her rent by debit card on or before the first of each month. On December 1, 2017, at the request from her Landlord, the Tenant signed papers to make pre-authorized payments (“PAP”) for her future rent.

The Tenant stated that she had sufficient rent funds in her account on January 1, 2018. As a result of the late PAP rent withdrawal on January 4, 2018, other withdrawals occurred in the meantime and resulted in insufficient funds for the rent. The Landlord charged the Tenant \$75.00 for a late fee and \$50.00 for a NSF fee. Although the Tenant included these amounts in her initial claim, she withdrew this and focused on the month of February 2018.

The Tenant testified that as a result of the mix-up for the January 2018 rent, she asked the Landlord to cancel the PAP and that she would attend to the Landlord's office to pay her February 2018 rent by debit card. On February 1, 2018, the Tenant stated that, as arranged, she attended and paid the Landlord \$1,350.00, for her February 2018 rent. She stated that the staff of the Landlord's did not mention that the PAP would still be going through for February.

On February 5, 2018, the Tenant learned that the \$1,350.00 amount for rent had been withdrawn twice on February 1, 2018 and had left her account with minimal funds. One withdrawal was because of her personal attendance and use of her debit card and the second withdrawal was as a result of a PAP withdrawal. The Tenant stated she immediately contacted the Landlord; however, did not receive a response until mid-month and did not receive the refund for the second rent payment until February 27, 2018, minus the Landlord's charges from January.

The Tenant testified and provided evidence that she incurred \$119.32 worth of NSF charges and overdraft charges as a result of the Landlord withdrawing and holding an extra \$1,350.00 from her account during the month of February.

The Landlord testified that the office staff told the Tenant on February 1, 2018, that her PAP had not been canceled. The Landlord stated that they would not have taken the Tenant's debit card payment if they knew that the PAP would proceed, but that the Tenant stated that she had canceled the PAP with her bank.

The Landlord referred to evidence submitted and stated that on February 14, 2018, they contacted the Tenant to request a copy of her bank statement to show the payment coming out. After the Tenant provided a copy of her bank statement that showed the two rent payments, the Landlord asked on February 16, 2018, whether the Tenant wanted to apply the extra rent to her account or to receive a refund minus the January fees.

The evidence showed that the Landlord later texted the Tenant and advised that a refund cheque had been mailed to her from Vancouver between February 16 and 19, 2018. The Tenant texted the Landlord on February 20, 2018 to advise that she hadn't received the refund yet. According to the Landlord's accounting department, the refund cheque was cashed on February 27, 2018.

The Landlord acknowledged the Tenant's payment at the office on February 1, 2018 and restated that the Landlord knew that the PAP was going to go through. The Landlord stated that

they were not interested in reimbursing the Tenant for any losses and then stated that the Landlord took responsibility for not stopping the PAP.

Analysis

Residential Tenancy Policy Guideline #16 refers to compensation for damage or loss between parties in a tenancy.

“The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. In order to determine whether compensation is due, the arbitrator may determine whether; a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement; loss or damage has resulted from this non-compliance; the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and, the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.”

During the hearing there was conflicting testimony about when the PAP's were supposed to be canceled, who was responsible for canceling them and the reasons for the Landlord's delay in returning the second rent payment.

When I review the testimony and evidence provided and consider, on a balance of probabilities, who was likely at fault for the double payment of rent, I reflect on the Landlord's testimony that they knew the PAP had not been canceled for February, yet accepted the debit card payment from the Tenant.

Although the exact details surrounding the acceptance of the two payments of rent are not clear, I find that it was likely a mistake and not an intentional breach by the Landlord. Nevertheless, I find the undisputed fact that the Landlord accepted double the amount of rent from the Tenant on February 1, 2018, is a breach of the Tenancy Agreement, that specifically states the rent of \$1,350.00 is due on the first of each month.

I accept the Tenant's testimony and evidence and find that the Tenant suffered a loss of \$119.32 because of the extra \$1,350.00 that was withdrawn from their account and further, that the Tenant attempted to minimize their losses by notifying the Landlord of the issue as soon as possible via a text, on February 5, 2018.

The Landlord testified and provided evidence that they texted the Tenant on February 14, 2018 to ask the Tenant to provide a copy of her bank statement showing the payment coming out. I find that this request further aggravated the circumstances and delayed the return of the Tenant's rent money as the Landlord could have easily confirmed through their own accounting, that the two rent payments had been received.

I accordance with Section 67 of the Act, I find the Tenant has established a monetary claim in the amount of \$219.32. This includes compensation of \$119.32 for losses due to having insufficient funds in her bank account as a result of the Landlord accepting two rent payments for February 2018 and the \$100.00 to recover the Filing Fee for this Application for Dispute Resolution.

Based on these determinations, I authorize the Tenant to deduct \$219.32 from a future rent payment, in accordance with Section 72(2) of the Act.

Conclusion

The Tenant has established a monetary claim, in the amount of \$219.32, which includes \$119.32 for losses due to having insufficient funds in her bank account as a result of the Landlord accepting two rent payments for February 2018 and \$100.00 to recover the fee paid to file this Application for Dispute Resolution. Pursuant to section 72(2) of the Act, I authorize the Tenant to deduct \$219.32 from a future rent payment.

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: July 3, 2018

Residential Tenancy Branch