



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding UNICAM DEVELOPMENTS LTD. and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes

MNDCL-S, MNRL-S, FFL

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 sections 26 and 67;
- a Monetary Order for damage or compensation, pursuant to section 67;
- authorization to retain the tenant's security and pet damage deposits, pursuant to section 38; and
- authorization to recover the filing fee from the tenant, pursuant to section 72.

The tenant did not attend this hearing, although I left the teleconference hearing connection open until 1:41 p.m. in order to enable the tenant to call into this teleconference hearing scheduled for 1:30 p.m. The landlord's manager (the "manager") attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the manager and I were the only ones who had called into this teleconference.

The manager testified that the tenant was served with the landlord's application for dispute resolution via registered mail on July 16, 2016. The Canada Post Tracking number for this registered mailing was entered into evidence. I find that the tenant was deemed served with the landlord's application on July 21, 2019, five days after its registered mailing, pursuant to sections 89 and 90 of the *Act*.

Issues to be Decided

1. Is the landlord entitled to a Monetary Order for unpaid rent, pursuant to sections 26 and 67 of the *Act*?
2. Is the landlord entitled to a Monetary Order for damage or compensation, pursuant to section 67 of the *Act*?
3. Is the landlord entitled to retain the tenant's security and pet damage deposits, pursuant to section 38 of the *Act*?
4. Is the landlord entitled to recover the filing fee from the tenant, pursuant to section 72 of the *Act*?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of the manager, not all details of his submissions and arguments are reproduced here. The relevant and important aspects of the landlord's claims and my findings are set out below.

The manager provided the following undisputed testimony. This tenancy began on December 1, 2016 and ended on June 30, 2019. Monthly rent in the amount of \$1,560.00 was payable on the first day of each month. A security deposit of \$700.00 and a pet damage deposit of \$700.00 were paid by the tenant to the landlord. A written tenancy agreement was signed by both parties and a copy was submitted for this application.

The landlord testified that on May 25, 2019 the tenant provided him with written notice to end tenancy effective June 30, 2019. The written notice to end tenancy was entered into evidence. The notice to end tenancy also provided the landlord with the tenant's forwarding address.

The landlord applied for dispute resolution on July 8, 2019.

The manager testified that the tenant's June 2019 rent cheque was returned due to insufficient funds. A copy of the returned cheque was entered into evidence. The manager testified that the landlord is seeking June 2019's rent in the amount of \$1,560.00 from the tenant.

The manager testified that the landlord is also seeking a \$25.00 NSF charge for the June 2019 rent cheque. Section aa. of the tenancy agreement states:

Nsf cheques, cancelled or dishonored cheques are subject to a \$25.00 fee....

The manager testified that the tenant left the subject rental property very dirty and with broken abandoned furniture. Photographs of same were entered into evidence. The manager testified that he and the tenant completed a move in condition inspection of the subject rental property when the tenant moved in. The move in inspection report was entered into evidence and states that the subject rental property is clean.

The landlord testified that he called the tenant to complete a move out condition inspection report but she did not answer his calls or complete the move out condition inspection report with him. The manager testified that he completed the move out condition inspection report alone. The move out condition inspection report was entered into evidence and states that the subject rental property is very dirty. The landlord entered into evidence a cleaning invoice in the amount of \$661.50 and is seeking this amount from the tenant.

Analysis

Section 26(1) of the *Act* states that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this *Act*. Pursuant to section 26(1) of the *Act*, I find that the tenant was obligated to pay the monthly rent in the amount of \$1,560.00 on June 1, 2019. Based on the testimony of the manager and the insufficient fund cheque entered into evidence, I find that the tenant did not pay rent in accordance with section 26(1) of the *Act* and owes the landlord \$1,560.00 in unpaid rent.

Section 7(1)(d) of the *Residential Tenancy Regulation* (the "*Regulation*") states that a landlord may charge subject to subsection (2), an administration fee of not more than \$25 for the return of a tenant's cheque by a financial institution or for late payment of rent. Section 7(2) of the *Regulation* states that a landlord must not charge the fee described in paragraph (1) (d) or (e) unless the tenancy agreement provides for that fee.

I find that, pursuant to section 7(1)(d) of the *Regulation*, that the landlord is entitled to charge the tenant a \$25.00 fee because her cheque was returned due to insufficient funds and this fee was provided for in the tenancy agreement.

Section 37 of the *Act* states that when a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.

Based on the photographic evidence of the manager, the manager's testimony and the condition inspection reports, I find that the rental unit required significant cleaning. The manager submitted into evidence a cleaning receipt totaling \$661.50. I find that the tenant is responsible for this cleaning fee.

As the landlord was successful in their application, I find that they are entitled to recover the \$100.00 filing fee from the tenant, pursuant to section 72 of the *Act*.

Section 38 of the *Act* states that within 15 days after the later of:

- (a) the date the tenancy ends, and
 - (b) the date the landlord receives the tenant's forwarding address in writing,
- the landlord must do one of the following:
- (c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;
 - (d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

I find that the landlord made an application for dispute resolution claiming against the security and pet damage deposits pursuant to section 38 of the *Act*.

Section 72(2) states that if the director orders a tenant to make a payment to the landlord, the amount may be deducted from any security deposit or pet damage deposit due to the tenant. I find that the landlord is entitled to retain the tenant's security and pet damage deposits in the amount of \$1,400.00 in part satisfaction of their monetary claim against the tenant.

Conclusion

I issue a Monetary Order to the landlord under the following terms:

| Item | Amount |
|----------------|------------|
| June 2019 rent | \$1,560.00 |

| | |
|---------------------------------------|-----------------|
| NSF fee | \$25.00 |
| Cleaning | \$661.50 |
| Filing Fee | \$100.00 |
| Less security and pet damage deposits | -\$1,400.00 |
| TOTAL | \$946.50 |

The landlord is provided with this 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.

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: October 22, 2019

Residential Tenancy Branch