



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR-LS, 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.

The landlord's agent (the landlord) attended and provided affirmed testimony. The tenant, A.F. attended as agent for H.H., but the tenants did not submit any documentary evidence.

The landlord stated that both tenants were each served with the notice of hearing package and the submitted documentary evidence via Canada Post Registered Mail on September 12, 2019 and was signed and received on September 13, 2019. The tenants argued that neither party received the packages and were instead notified via email from the RTB that an evidence deadline had occurred for the hearing. The tenants stated that though this the RTB was contacted and the hearing details were obtained. The landlord provided in her direct testimony the Canada Post Customer Receipt Tracking Numbers. A review of both numbers on the Canada Post Tracking website confirmed the landlord's details. The tenants argued that the signature on one delivery confirmation was from neither of the tenants.

I find on a balance of probabilities that I prefer the evidence of the landlord over that of the tenants. The landlord provided undisputed affirmed evidence that the notice of hearing packages and the submitted documentary evidence were served via Canada Post Registered Mail. Although the tenants disputed this and stated that the signature

on the delivered package was not theirs, the landlord provided in her direct testimony the Canada Post Customer Receipt Tracking numbers for both packages. A review of the Canada Post online tracking website confirmed the landlord's claims. I find that the tenants have been properly served as per sections 88 and 89 of the Act. The tenants were advised that where possible, the details of any specific documents would be described in as much detail to the tenants as possible. The tenants were also advised if they had any specific questions about a document that it would be provided to them during the hearing.

At the outset, the landlord clarified that the monetary claim was for unpaid rent, money owed or compensation and recovery of the filing fee as per the submitted copy of the monetary worksheet dated November 13, 2019 totalling, \$1,802.00. The tenants argued that the landlord should be limited to the amount filed of \$1,795.00 instead of the \$1,802.00 clarification. After reviewing the details of the clarified claim in which there is a \$7.00 difference, I find that the error was due to a mathematical error and as such, allow the hearing to proceed on the landlord's monetary claim based upon the monetary worksheet as the details remain the same.

Issue(s) to be Decided

Is the landlord entitled to a monetary order for unpaid rent, money owed or compensation for damage or loss 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 January 31, 2019 on a fixed term tenancy until January 31, 2020 as per the submitted copy of the signed tenancy agreement dated January 30, 2019. The monthly rent was \$2,795.00 payable on the 1st day of each month. A security deposit of \$1,397.50 was paid and an agreement to pay \$225.00 per month for parking. A condition inspection report for the move-in and the move-out was completed by parties.

The landlord seeks a clarified monetary claim of \$1,802.00 which consists of:

\$3,020.00	Unpaid Rent and Parking, August 2019
\$136.50	Cleaning
\$18.00	lightbulb replacements
\$25.00	NSF Charge, August 2019 Rent Payment
-\$1,397.50	Less, Security Deposit held
\$1,802.00	Total Claim

The landlord referred to a completed condition inspection report for the move-out, specifically section “I” where the tenant signed in agreement to a deduction of \$1,510.00 from the security deposit. The tenant confirmed in his direct testimony this agreement. The landlord also noted that in section “Z”, damage of \$18 for 3 lightbulbs, \$130 for partial cleaning and a \$25 NSF Fee. The landlord stated that this coincides with the above claims noted as they were completed at the end of tenancy and prior to the actual expenses incurred as shown in the submitted invoices/receipts.

During the hearing the tenant also argued that the rent for August 2019 was partially paid as the tenants had attempted to have the landlord agree to using the held \$1,397.50 security deposit for unpaid rent. Both the tenant and the landlord agreed that no actual agreement was made to apply the security deposit to the unpaid rent, despite the tenants’ request.

The landlord provided undisputed affirmed evidence that the unpaid rent of \$3,020.00 consists of \$2,795.00 in rent for August and \$225.00 for parking. The landlord stated that these amounts are reflected in the signed tenancy agreement. The tenants confirmed that neither the rent or parking fee was paid for August.

During the hearing the landlord cancelled the request for recovery of the \$25.00 NSF Fee. As such, no further action is required for this portion of the claim.

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 on the balance of probabilities that the tenant caused the damage and that it was beyond reasonable wear and tear that could be expected for a rental unit of this age.

I accept the undisputed affirmed evidence of the landlord and find that a monetary claim has been established as claimed by the landlord with the exception for the \$25.00 NSF Fee. The landlord provided undisputed evidence of rent and a parking fee unpaid for August. The tenant confirmed these details in his direct testimony. Both parties confirmed in their direct testimony that the tenant signed in agreement to the details of the completed condition inspection report where the tenant agreed to deductions totalling \$1,510.00, although only details on the report totalled, \$173.00. I find that these details coincide with the landlord's claims for cleaning and lightbulb replacement costs. On this basis, the landlord is entitled to a monetary claim of \$3,174.50.

I authorize the landlord to offset this claim against the \$1,397.50 security deposit in partial satisfaction of the claim for a total of \$1,777.00. The landlord is also entitled to recovery of the \$100.00 filing fee.

Conclusion

The landlord is granted a monetary order for \$1,877.00.

This order must be served upon the tenants. Should the tenants fail to comply with this order, the 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: January 09, 2020

Residential Tenancy Branch