



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Skyline Living
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNRL-S, MNDCL-S, FFL

Introduction

This hearing dealt with a landlord's application for monetary compensation for unpaid rent, NSF fee, and cleaning costs; and, authorization to retain the tenant's security deposit.

The landlord's agent appeared at the hearing and was affirmed. There was no appearance on part of the tenant. Since the tenant did not appear, I explored service of the hearing materials upon the tenant.

The landlord's agent submitted that the proceeding package and evidence was sent to the tenant at his forwarding address, provided on the move-out inspection report, via registered mail on August 23, 2021. A search of the registered mail tracking number showed the registered mail was successfully delivered on August 31, 2021. I was satisfied the tenant was duly served with notification of this proceeding and I continued to hear from the landlord without the tenant present.

Issue(s) to be Decided

1. Has the landlord established an entitlement to the amounts claimed against the tenant?
2. Is the landlord authorized to retain the tenant's security deposit?
3. Award of the filing fee.

Background and Evidence

The one year fixed term tenancy started on June 1, 2020 and was set to expire on May 31, 2021 and then continue on a month to month basis thereafter. The tenant paid a security deposit of \$637.50 and the rent was set at \$1275.00 payable on the first day of

every month. The tenancy agreement includes an arrears clause that provides for a charge of \$25.00 where the rent payment is late or a cheque is returned for insufficient funds. The parties also executed a separate parking agreement providing for a parking fee of \$25.00.

The landlord submitted that the tenant's rent and parking payment for July 2021 was returned due to insufficient funds. On July 11, 2021 the tenant gave a notice to end the tenancy effective August 31, 2021 and a Mutual Agreement to End a Tenancy was signed indicating the tenancy would end as of August 31, 2021.

According to the landlord's agent, the tenant indicated his intention to move out early and on July 18, 2021 the landlord's manager and the tenant participated in a move-out inspection together. A move-out inspection report was also prepared on that date although the tenant did not finish moving out for a few more days.

The landlord submitted that the move-out inspection report indicates that the tenant was in agreement that 3 hours of cleaning were required and there would be a charge of \$40.00 per hour even though the tenant had not yet moved out. At the hearing, the landlord's agent affirmed that the cleaning was still required when the tenant returned possession of the unit to the landlord.

The landlord's agent testified that the landlord was able to re-rent the unit for August 2021.

By way of this application, the landlord is seeking to recover unpaid rent and parking fees for July 2021, an NSF fee for the returned payment for July 2021, and cleaning of \$120.00.

Documentary evidence provided by the landlord included a copy of the tenancy agreement; the move-in and move-out inspection reports, the ledger showing the returned payment for July 2021; the tenant's notice to end tenancy; and, the Mutual Agreement to End a Tenancy.

Analysis

Under section 26 of the Act, a tenant is required to pay rent when due in accordance with their tenancy agreement, even if the landlord has violated the Act, regulations, or tenancy agreement, unless the tenant has a legal right to withhold rent. I was not presented any information to suggest the tenant had a legal right to withhold rent.

I accept the evidence before me that the tenant was required to pay rent of \$1275.00 on the first day of every month. I was also provided a parking agreement executed by the parties that provides for a fee of \$25.00 per month for a parking space. The landlord demonstrated the tenant's pre-authorized payment of \$1300.00 for the month of July 2021 was returned due to insufficient funds. Therefore, I find the landlord entitled to recover unpaid rent and parking fees for the month of July 2021 in the sum of \$1300.00 and I award that amount to the landlord.

Section 7 of the Residential Tenancy Regulations provides that a landlord may charge a tenant up to \$25.00 for a late fee or returned cheque fee, so long as there is such a provision in the tenancy agreement. The tenancy agreement executed by the parties includes such a provision and I was provided unopposed evidence that the tenant's pre-authorized payment for the month of July 2021 was returned. Therefore, I find the landlord entitled to an award of \$25.00 for a late fee or NSF fee.

As for cleaning, section 37 of the Act requires that a tenant leave a rental unit "reasonably clean". I was provided two versions of a move-out inspection report. One version was initialled by the tenant and the manager and this report indicates the rental unit was in good condition and there is no indication that anything required additional cleaning even though there are boxes on the form to indicate that. The other version was signed by the tenant and the manager and every area on the form indicates it is in "OK" condition and there are no specific areas identified as needing cleaning even though there is a notation at the bottom of the form that the tenant is responsible for 3 hours of cleaning. When I turn to the ledger provided as evidence, I do not see any charge or cost for cleaning the unit. Considering all of this evidence together, I find I am unsatisfied the tenant failed to leave the rental unit "reasonably clean" and the landlord suffered a loss to clean the rental unit as a result. Therefore, I deny the landlord's claim for cleaning.

The landlord's claim had some merit and I further award the landlord recovery of the \$100.00 filing fee paid for this application.

I authorize the landlord to retain the tenant's security deposit in partial satisfaction of the rent owed to the landlord.

In light of all of the above, the landlord is provided a Monetary Order to serve and enforce upon the tenant, calculated as follows:

| | |
|--|-----------------|
| Unpaid Rent and parking fee: July 2021 | \$1300.00 |
| Late/NSF fee | 25.00 |
| Filing fee | 100.00 |
| Less: security deposit | <u>(637.50)</u> |
| Monetary Order | \$ 787.50 |

Conclusion

The landlord is authorized to retain the tenant's security deposit and is provided a Monetary Order for the balance owing of \$787.50 to serve and enforce upon the tenant.

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: February 23, 2022

Residential Tenancy Branch