



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR MNDC FF

Introduction

This hearing was convened to hear matters pertaining to an Application for Dispute Resolution filed by the Landlord August 23, 2016 and amended on September 6, 2016. The Landlord initially filed seeking a \$550.00 Monetary Order for unpaid rent and to recover the cost of the filing fee. The Landlord then added a request to seek late payment fees in an amended application.

The hearing was conducted via teleconference and was attended by the Landlord and the Tenant. Each person gave affirmed testimony and the Tenant stated he would be representing both Tenants in this matter. The Tenant identified that he had a witness in the room with him.

I explained the expectations for conduct during the hearing. I then requested that the Tenant's witness leave the room until called to testify, in accordance with the Rules of Procedure. Each party was provided an opportunity to ask questions about the process; however, each declined and acknowledged that they understood how the conference would proceed.

The Tenant confirmed receipt of the Landlord's application and denied receiving the Landlord's evidence submissions. The Landlord testified he served the Tenant via three registered mail packages that were sent on August 26, 2016; October 20, 2016; and December 12, 2016.

Upon review of the Landlord's evidence I noted that the Landlord had submitted copies of the Canada Post tracking receipts; cash register receipts; and print outs of the Canada Post tracking website showing the packages were signed received. The Tenant was given an opportunity to respond to that evidence to which he replied that maybe he had signed and received those packages but he did not recall doing so. The Tenant stated his mailing address was a service address consisting of a unit or box number located at a retail mail outlet; not an address where he resided. Based on the foregoing, I find the Tenant was sufficiently served with the Landlord's application and evidence.

The Landlord confirmed receipt of the Tenant's evidence submission. No issues or concerns were raised regarding receipt of that evidence. As such, I accepted all relevant submissions from both parties as evidence for this proceeding.

The evidence before me included copies of and/or references to: a June 20, 2016 Decision; a July 17, 2016 Review Consideration Decision; and an August 17, 2016 Request for Correction Decision; as noted on the front page of this Decision. I explained to both parties that res judicata is a doctrine that prevents rehearing of claims and issues, arising from the same cause of action between the same parties, after a final judgment was previously issued on the merits of the case.

Both parties confirmed their understanding that the Tenant had been issued a \$1,150.00 Monetary Order on June 20, 2016 which consisted of the return of the \$1,100.00 (\$550.00 + \$550.00) which was paid at the beginning of the tenancy by the Tenant plus the \$50.00 filing fee. I informed the parties that regardless of what they preferred to call that money; either as security and pet deposit or a security deposit and prepayment of rent; the fact remains the Tenant was issued an Order for the return of that \$1,100.00.

I then explained that I could not hear submissions relating to the \$1,100.00 paid for any deposits or prepayments that related to findings and/or orders that were issued in the previous Decisions. I then clarified how the Landlord was granted leave in the Review Consideration Decision to seek recovery of any amounts of unpaid September 2015 rent.

Each party was provided an opportunity to ask questions about what evidence I could hear today. Each person declined and acknowledged that they understood how the conference would proceed.

Both parties were provided with the opportunity to present relevant oral evidence, to ask questions, and to make relevant submissions. However, despite each party acknowledging they understood the expectations for conduct, and what evidence I could hear, each began to argue, speak out of turn and over top of me, to the point I had to disconnect both parties and end the hearing.

Issue(s) to be Decided

- 1) Was September 1, 2015 rent paid in full?
- 2) Is the Landlord entitled to late payment fees for September 2015 rent?

Background and Evidence

The Landlord initially testified he was seeking \$1,100.00 in unpaid rent for September 2015. Upon review of his documentary evidence the Landlord confirmed he had received \$550.00 from the Tenant via email transfer as partial payment for the September 2015 rent; leaving a balance owed of \$550.00 for September 2015.

As per the tenancy agreement submitted into evidence this tenancy commenced on May 1, 2015. Rent of \$1,100.00 was payable on the first of each month. The tenancy ended September 30, 2015.

The Landlord pointed to the tenancy agreement addendum item 26 which provided for a \$50 charge for late rent. He stated he was seeking \$850.00 based on \$50 per month for the 17 months that September 2015 rent remained unpaid.

The Tenant testified that on September 1, 2015 he paid only \$550.00 towards the September 2015 rent; as supported by the email transfer provided in the Landlord's evidence.

Despite informing both parties that I did not have the authority to change the June 20, 2016 Decision relating to the disbursement of the deposit(s) and/or prepayments of any rents, I heard both the Landlord and Tenant state they had mutually agreed that the Tenant would only pay \$550.00 towards September 2015 rent as the Landlord was holding a \$550.00 prepayment of last month's rent. They both confirmed the Landlord had been holding \$550.00 as the security deposit and \$550.00 as last month's prepayment of rent; as noted on page three of the tenancy agreement submitted in the Landlord's evidence. However, as referenced above, the previous Arbitrator determined the \$1,100.00 was comprised of a \$550.00 security deposit and a \$550.00 pet deposit in the June 20, 2016 Decision.

I heard the Tenant state that he would not be having his witness testify because she was going to speak about giving him the money to send in that email transfer to the Landlord. He stated that the Landlord did not deny receiving that \$550.00 so there was no need to have his witness speak. The Tenant also argued the Landlord has failed to comply with the June 20, 2016 Order as no payment had been made to him.

Analysis

Section 62 (2) of the *Act* stipulates that the director may make any finding of fact or law that is necessary or incidental to making a decision or an order under this *Act*. After

careful consideration of the foregoing; documentary evidence; and on a balance of probabilities I find pursuant to section 62(2) of the *Act* as follows:

Section 67 of the Residential Tenancy Act states that without limiting the general authority in section 62(3) [*director's authority*], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

I could not make findings in this matter without considering the evidence before me that, notwithstanding the mutual agreement that had been made between the Landlord and Tenant, a Decision and Order were issued June 20, 2016 ordering the return of the \$1,100.00 to the Tenant.

I then considered the undisputed evidence that rent was \$1,100.00 per month and on September 1, 2015 the Tenant made a partial payment of \$550.00; leaving a balance owed of \$550.00 for September 2015 rent. Accordingly, I grant the Landlord's application for unpaid rent in the amount of **\$550.00**, pursuant to section 67 of the *Act*.

In the presence of the undisputed evidence that the parties had mutually agreed how September 2015 rent would be paid which required the Tenant to pay only \$550.00 on September 1, 2015, and in consideration that the Landlord had not yet complied with the June 2016 Order to pay the Tenant the amounts listed in that Order; I do not find the Landlord is entitled to a \$50.00 late payment charge for 17 months.

In addition, I find the term provided in the addendum for a late payment charge of \$50.00 per month is a breach of Section 7 of the Regulations which stipulates that a landlord may charge a tenant a \$25.00 non-refundable fee for late payments providing that the tenancy agreement provides for that fee. The Regulations do not allow for an increase to that fee and do not allow that fee to be compounded every month. Accordingly, I find the term in this tenancy addendum to be in breach of the Regulations and it is therefore, unenforceable. Accordingly, the claim of \$850.00 for late payment fees is dismissed, without leave to reapply.

Section 72(1) of the Act stipulates that the director may order payment or repayment of a fee under section 59 (2) (c) [*starting proceedings*] or 79 (3) (b) [*application for review of director's decision*] by one party to a dispute resolution proceeding to another party or to the director.

The Landlord has partially succeeded with their application; therefore, I award partial recovery of the filing fee in the amount of **\$50.00**, pursuant to section 72(1) of the Act.

The Tenant is hereby ordered to pay the Landlord the total amount of **\$600.00** (\$550.00 + \$50.00), forthwith. The Landlord has been issued a Monetary Order in the amount of **\$600.00** which may be enforced through Small Claims Court upon service to the Tenant.

Conclusion

The Landlord was partially successful with his application and was issued a **\$600.00** Monetary Order.

This decision is final, legally binding, and 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, 2017

Residential Tenancy Branch