



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND-S, MNR-S, 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 and for damage to the unit 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 his filing fee for this application from the tenants pursuant to section 72.

The landlord's agent (the landlord) attended the hearing via conference call and provided affirmed testimony. The tenants did not attend or submit any documentary evidence. The landlord stated that the tenants were each served with the notice of hearing package and the submitted documentary evidence via Canada Post Registered Mail on October 25, 2018. The landlord has provided copies of the Canada Post Customer Receipt and tracking labels for each tenant as confirmation. During the hearing the landlord stated that the tenants had signed in receipt of the package on October 29, 2018 and that the tenants had vacated the rental unit on October 29, 2018. I accept the undisputed affirmed testimony of the landlord and find that both parties have been properly served as per sections 88 and 89 of the Act.

During the hearing the landlord withdrew a portion of the monetary claim of \$500.00 for cleaning as he stated that he was not prepared to go ahead with that claim. As such, this portion of the landlord's application required no further action.

Issue(s) to be Decided

Is the landlord entitled to a monetary order for damage, for unpaid rent 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 June 1, 2018 on a 12 month fixed term tenancy ending on May 31, 2019. The monthly rent is \$2,900.00 payable on the 1st day of each month. A security deposit of \$1,450.00 was paid on May 17, 2018.

The landlord seeks an amended monetary claim of \$10,550.00 which consists of:

\$10,300.00	Unpaid Rent,	\$150.00	July 2018
		\$2,900.00	August 2018
		\$2,900.00	September 2018
		\$2,900.00	October 2018
		\$1,450.00	November 2018
\$125.00	Late Fee(s),	\$25.00	June 2018
		\$25.00	July 2018
		\$25.00	August 2018
		\$25.00	September 2018
		\$25.00	October 2018
\$125.00	NSF Charge(s),	\$25.00	June 2018
		\$25.00	July 2018
		\$25.00	August 2018
		\$25.00	September 2018
		\$25.00	October 2018

The landlord provided undisputed affirmed testimony that the tenants failed to pay rent on the above noted months during the tenancy. The landlord also stated that on each occasions the tenants' rent payment was returned as "NSF" by their bank and as such incurred a NSF charge and a late rent fee as provided for in the signed tenancy agreement.

In support of these claims, the landlord has provided copies of:

Tenancy Agreement
Tenant Ledger

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, I accept the undisputed affirmed evidence of the landlord and find that the landlord has provided sufficient evidence on a balance of probabilities that the tenants failed to pay rent as claimed. As a result the landlord incurred “NSF” charges and as per the tenancy agreement, the landlord is entitled to recovery of NSF/Late Rent Fee(s) as claimed.

The landlord has established a total monetary claim of \$10,550.00. The landlord having been successful is also entitled to recovery of the \$100.00 filing fee. I authorize the landlord to retain the \$1,450.00 security deposit in partial satisfaction of the claim and grant the landlord a monetary order for the balance due of \$9,200.00.

Conclusion

The landlord is granted a monetary order for \$9,200.00.

This order must be served upon the tenants. Should the tenants fail to comply with the 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: February 14, 2019

Residential Tenancy Branch