



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CAPITAL REGION HOUSING
CORPORATION and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes FFL MNDCL-S MNRL-S OPR

Introduction

This hearing was convened by way of conference call concerning an application made by the landlord seeking an Order of Possession and a monetary order for unpaid rent or utilities; a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; an order permitting the landlord to keep all or part of the pet damage deposit or security deposit; and to recover the filing fee from the tenant for the cost of the application.

The landlord was represented at the hearing by an agent who gave affirmed testimony and provided evidentiary material in advance of the hearing, and was accompanied by a building manager and a caretaker. However the line remained open while the telephone system was monitored for 10 minutes prior to hearing any testimony, and no one for the tenant joined the call. The landlord's agent testified that the tenant was served with the Application for Dispute Resolution, notice of this hearing and evidentiary material (the Hearing Package) by registered mail on September 12, 2019 and has provided a Canada Post tracking document confirming that testimony. The documents were returned to the landlord unclaimed. I find that the tenant has been served in accordance with the *Residential Tenancy Act*.

At the commencement of the hearing the landlord's agent withdrew the application for an Order of Possession; the tenant has vacated the rental unit and the landlord has possession of it.

Issue(s) to be Decided

- Has the landlord established a monetary claim as against the tenant for unpaid rent?

- Has the landlord established a monetary claim as against the tenant for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and more specifically for parking fees, fob replacement and NSF fees?
- Should the landlord be permitted to keep all or part of the pet damage deposit or security deposit in full or partial satisfaction of the claim?

Background and Evidence

The landlord's agent testified that this month-to-month tenancy began on April 1, 2019. Rent in the amount of \$1,450.00 per month was payable on the 1st day of each month. At the outset of the tenancy the landlord collected a security deposit from the tenant in the amount of \$725.00 which is still held in trust by the landlord, and no pet damage deposit was collected. The rental unit is an apartment in a complex that contains 144 units in 2 buildings, and a copy of the tenancy agreement has been provided as evidence for this hearing.

The landlord's agent further testified that the tenant normally paid rent by way of pre-authorized debit, however the failed to pay rent when it was due in August, 2019. The landlord caused the tenant to be served with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, a copy of which has been provided as evidence for this hearing. It is dated August 14, 2019 and contains an effective date of vacancy of August 24, 2019 for unpaid rent in the amount of \$1,450.00 that was due on August 1, 2019. The tenant did not dispute it and did not pay the rent.

The landlord's agents found the rental unit abandoned on September 27, 2019, and the tenant did not pay any rent for September and did not return 2 building fobs which cost \$50.00 each.

The landlord also claims unpaid parking for the months of July, August and September at \$60.00 each. There is a waiting list for parking, and the landlord didn't re-assign the tenant's parking spot because the landlord did not know the tenant would be vacating. The landlord claims \$180.00 for loss of parking revenue as well as NSF fees of \$20.00 for the returns of rent and parking that were not honoured by the tenant's financial institution.

The landlord has provided a Statement of Account, and the landlord seeks monetary compensation as follows:

- \$60.00 for parking for July, 2019;
- \$1,450.00 for August rent;
- \$60.00 for parking for August;
- \$1,450.00 for September rent;

- \$60.00 for parking for September;
- \$100.00 for NSF fees; and
- \$100.00 for building fobs.

The landlord has provided a copy of the tenancy agreement and Addendum, which states, in part: "Arrears: Late payment of rent must be made by CERTIFIED CHEQUE, MONEY ORDER, or DEBIT/INTERAC. Cheques returned by the bank for which there are insufficient funds (NSF) must be replaced by CERTIFIED CHEQUE, MONEY ORDER, or DEBIT/INTERAC and a \$20.00 penalty will be charged to the tenant."

Analysis

I have reviewed all of the evidentiary material provided by the landlord, and I accept the undisputed testimony of the landlord's agent that the tenant's payments for rent for August and September, 2019 were not honoured by the tenant's financial institution and the landlord has established a claim of \$2,900.00 for unpaid rent and \$180.00 for parking.

The Statement of Account clearly shows that the tenant's payments for rent for 2 months and parking for 3 months were not honoured by the tenant's financial institution. The regulations to the *Residential Tenancy Act* specify that a landlord may charge a non-refundable fee for late payment of rent or return of a tenant's cheque by a financial institution, so long as it is included in the tenancy agreement. In this case, it is included in the Addendum to the tenancy agreement, and I find that the landlord has established \$100.00 of late fees.

The regulations also specify that a landlord may charge a cost of replacing keys or other access devices, and I accept the undisputed testimony of the landlord that the replacement is \$50.00 per building fob and the tenant abandoned the rental unit without returning either fob.

Since the landlord has been successful with the application the landlord is also entitled to recovery of the \$100.00 filing fee.

I order the landlord to keep the \$725.00 security deposit in partial satisfaction of the claim, and I grant a monetary order in favour of the landlord as against the tenant for the balance in the amount of \$2,655.00 (\$1,450.00 August rent + \$1,450.00 September rent + \$180.00 parking + \$100.00 late fees + \$100.00 building fobs + \$100.00 filing fee = \$3,380.00, less \$725.00 security deposit = \$2,655.00).

Conclusion

For the reasons set out above, I hereby order the landlord to keep the \$725.00 security deposit and I grant a monetary order in favour of the landlord as against the tenant pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$2,655.00.

This order is final and binding and may be enforced.

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: November 14, 2019

Residential Tenancy Branch