



Dispute Resolution Services

Page: 1

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 MNDCL FFL

Introduction

The landlord seeks compensation for unpaid rent and for NSF costs pursuant to section 67 of the *Residential Tenancy Act* ("Act"). In addition, the landlord seeks to recover the cost of the application filing fee pursuant to section 72 of the Act.

The landlord's agent (hereafter "landlord") attended the hearing, which was held by teleconference on Tuesday, August 24, 2021 at 1:30 PM. The tenant did not attend the hearing. I am satisfied based on evidence provided, which included a Canada Post registered mail tracking slip and delivery confirmation, that the tenant was served the Notice of Dispute Resolution Proceeding in compliance with the Act and the *Rules of Procedure*.

Issues

1. Is the landlord entitled to compensation?
2. Is the landlord entitled to recover the filing fee cost?

Background and Evidence

Relevant evidence, complying with the *Rules of Procedure*, was carefully considered in reaching this decision. Only relevant oral and documentary evidence needed to resolve the specific issues of this dispute, and to explain the decision, is reproduced below.

The tenancy began on August 14, 2020 and ended on February 20, 2021. Monthly rent, which was due on the first day of the month, was \$1,685.00. The tenant paid a \$842.50 security deposit which the landlord holds in trust pending the outcome of this dispute.

The landlord testified and submitted that they seek \$3,074.18 in compensation. This amount is comprised of \$3,024.18 in rent arrears for January and February 2021, and \$50.00 for two NSF charges incurred from the tenant's bounced cheques provided for rent for the months of January and February 2021. It is worth noting that the tenancy agreement includes a clause (titled "NSF CHARGES") in which the parties agree that in respect of any dishonoured payment made by cheque, that the tenant will pay to the landlord any dishonoured payment that is charged by the bank to the landlord.

Submitted in support of the landlord's claim was the following documentary evidence: a copy of the written tenancy agreement, a lease ledger showing the arrears and NSF charges, two inspection condition reports, a "Notice Received Letter," a copy of a Mutual Agreement to End Tenancy, a completed Monetary Order Worksheet (RTB Form 27).

Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

Section 26 of the Act requires that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with the Act, regulations, or the tenancy agreement, unless the tenant has a right under the Act to deduct all or some of the rent.

The landlord testified, and provided documentary evidence to support their submission, that the tenant did not pay rent for January and February 2021. Rent arrears are, I find, in the amount of \$3,024.18. There is no evidence before me that the tenant had any legal right under the Act to not pay the rent.

Section 7(1) of the Act states that if a landlord or tenant "does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results."

In this case, the tenant failed to comply with the tenancy agreement in paying the rent with a cheque that was valid, and thus they are responsible for paying the landlord NSF (that is, the dishonoured payment) charges in the amount of \$50.00.

Taking into consideration all the undisputed oral testimony and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the landlord has met the onus of proving their claim for compensation in the amount of \$3,074.18. Pursuant to [section 67](#) of the Act, this amount is awarded.

Section 72 of the Act permits me to order compensation for the cost of the filing fee to a successful applicant. As the landlord was successful, I grant \$100.00 in compensation for the filing fee. The total amount awarded to the landlord is thus \$3,174.18.

Section 38(4)(b) of the Act permits a landlord to retain an amount from a security or pet damage deposit if “after the end of the tenancy, the director orders that the landlord may retain the amount.” As such, I order that the landlord may retain the tenant’s security deposit of \$842.50 in partial satisfaction of the above-noted award. The balance of the award—\$2,331.68—is issued to the landlord by way of a monetary order. This order is issued in conjunction with the decision, and it must be served by the landlord on the tenant. (That is, the tenant will only receive a copy of this decision, and not the order.)

Conclusion

I HEREBY

1. grant the landlord’s application;
2. authorize and order the landlord to retain the tenant’s security deposit; and,
3. grant the landlord a monetary order in the amount of \$2,331.68.

This decision is made on delegated authority under section 9.1(1) of the Act.

Dated: August 24, 2021

Residential Tenancy Branch