

DECISION

Introduction

This hearing dealt with the Landlord's Application for Dispute Resolution under the *Residential Tenancy Act* (the "Act") for:

- a Monetary Order for unpaid rent under section 67 of the Act;
- a Monetary Order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement under section 67 of the Act;
- authorization to retain all or a portion of the Tenant's security deposit in partial satisfaction of the Monetary Order requested under section 38 of the Act;
- and authorization to recover the filing fee for this application from the Tenant under section 72 of the Act.

and the Tenant's cross application under the Act for:

- a monetary order for compensation for damage or loss under the Act, Residential Tenancy Regulation (Regulation) or tenancy agreement, pursuant to section 67;
- an order for the Landlord to return the security deposit, pursuant to section 38;
- and authorization to recover the filing fee for this application from the Landlord under section 72 of the Act.

Preliminary Matters

The Landlord attended at the date and time set for the hearing of this matter. Although I left the line open while conducting the hearing until 1:51pm, the Tenant did not attend.

I confirmed that the correct call-in numbers and participant codes had been provided in the Tenant's Notice of Hearing.

Rule of Procedure 7 states:

Rule 7.1 Commencement of the hearing

The hearing must commence at the scheduled time unless otherwise decided by the arbitrator.

Rule 7.3 Consequences of not attending the hearing

The arbitrator may conduct the hearing in the absence of a party or dismiss the application, with or without leave to re-apply.

Accordingly, in the absence of any attendance at this hearing by the Tenant, I order the Tenant's application dismissed without leave to reapply.

Issues to be Decided

Is the Landlord entitled to unpaid rent for January 2023?

Is the Landlord entitled to late fees for rent owing for January 2023?

Is the Landlord entitled to retain the Tenant's deposits?

Is the Landlord entitled to recover their filing fee?

Facts and Analysis

The Landlord provided testimony and evidence as follows:

- This tenancy began on July 1, 2020, with a security deposit of \$675.00 and a pet deposit of \$675.00. The monthly rent at the end of the tenancy was \$1,397.00, due on the first of each month.
- The parties completed a move-in inspection in June 2020.
- The parties mutually agreed to end the tenancy as of January 31, 2023.
- The Tenant vacated the rental unit prior to January 31, 2023, without written notice to the Landlord.
- The parties completed a move-out inspection on January 18, 2023.
- The Tenant provided their forwarding address on the move-out inspection form.
- The last rent payment the Landlord received from the Tenant was for December 2022.
- On February 1, 2023, the Landlord filed an application to retain the Tenant's deposits for unpaid rent and late fees.

Is the Landlord entitled to unpaid rent for January 2023?

Section 26(1) of the Act states that a Tenant must pay rent when it is due under the tenancy agreement, whether or not the Landlord complies with this Act. I find that the Tenant was obligated under the tenancy agreement to pay the monthly rent on the first day of each month.

Under section 7 of the Act, where a Tenant vacates the rental unit without notice, before a tenancy agreement has ended, the Tenant must compensate the Landlord for the damage or loss that results. This can include the unpaid rent to the date the tenancy agreement ended.

I find the Tenant agreed to end the tenancy on January 31, 2023 and did not provide notice to terminate the tenancy at an earlier date.

Therefore, the Landlord is entitled to unpaid rent for January 2023 in the amount of \$1,397.00 under section 67 of the Act.

Is the Landlord entitled to late fees for rent owing for January 2023?

Section 7(2) of the Regulation states the Landlord can only charge late rent fees if the tenancy agreement provides for that fee. I find the tenancy agreement includes as term two of the addendum that the Tenant must pay a late fee of \$25.00.

Based on the testimony of the Landlord, I find that the Tenant did not pay rent on January 1, 2023, in accordance with the tenancy agreement.

Therefore, I find the Landlord is entitled to the \$25.00 late fee under section 67 of the Act.

Is the Landlord entitled to retain the Tenant's deposits?

If the Landlord does not have the Tenant's agreement in writing to retain all or a portion of the security and/or pet damage deposit, section 38(1) of the Act states that within 15 days of either the tenancy ending or the date that the Landlord receives the Tenant's forwarding address in writing, whichever is later, the Landlord must either repay any security or pet damage deposit or make an application for dispute resolution claiming against the security deposit or the pet damage deposit.

I find the Landlord applied to retain the Tenant's deposits on February 1, 2023, within 15 days of receiving the Tenant's forwarding address in writing.

I find interest accumulated on the Tenant's deposits in the amount of \$2.31 from January 1, 2023 to February 1, 2023, when the Landlord applied to retain the deposit, for a total deposit amount of \$1,352.31.

I find the Landlord has established a claim for rent and late fees which may be offset from the deposits under section 72(2)(b) of the Act.

Is the Landlord entitled to recover their filing fee?

As the Landlord was successful in their application, I find that the Landlord is entitled to recover the \$100.00 filing fee paid for this application under section 72 of the Act.

Summary and Set-off

The Landlord holds \$1,352.31 in deposits. The Landlord has established a claim for \$1,522.00, which will be set off from the deposits according to section 72(2) of the Act.

I order the Landlord to retain the Tenant's deposits, valued at \$1,352.31, and I grant the Landlord a monetary order for the balance owing in the amount of **\$169.69**.

| Claim | Amount Granted | Sett-off Deposit | Balance Owing |
|-------------------|-----------------------|-------------------------|----------------------|
| January 2023 rent | \$1,397.00 | | |
| Late fees | \$25.00 | | |
| Filing fee | \$100.00 | | |
| TOTAL | \$1,522.00 | \$1,352.31 | \$169.69 |

Conclusion

The Tenant's application is dismissed in its entirety without leave to reapply.

I order the Landlord to retain the Tenant's deposits in the amount of \$1,352.31 in partial satisfaction of their claims under sections 38, 67 and 72 of the Act.

I grant the Landlord a monetary order for **\$169.69** on the above terms. The Landlord is provided with this order and must serve it on the Tenant as soon as possible. Should the Tenant fail to comply with the order, it 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 Act.

Dated: October 23, 2023

Residential Tenancy Branch