



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes MNR, MND, MNSD, MNDC, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord for monetary orders for unpaid rent and alleged damages to the rental unit, for compensation under the Act and the tenancy agreement, to retain the security deposit in partial satisfaction of the claim, and to recover the filing fee for the Application.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

I note the Landlord provided a monetary order worksheet, however, the Landlord did not supply the documents in evidence listed in support of the claim to the Branch or to the respondent Tenant.

Issue(s) to be Decided

Is the Landlord entitled to monetary compensation from the Tenant?

Background and Evidence

The parties were involved in a prior hearing, held on February 28, 2011, in which the parties reached a mutual agreement to end the tenancy on March 6, 2011. Based on the agreement, an order of possession was granted for March 6, 2011, at 1:00 p.m.

According to the testimony of the Agent for the Landlord, the Tenant vacated the property at 4:00 p.m. on March 6, 2011.

The Landlord is claiming that the Tenant failed to pay rent for February or March of 2011. The Landlord is also claiming for the cost of a locksmith to change the locks on the rental unit.

The Agent for the Landlord testified that the Tenant had been late paying rent in the past and also had a rent cheque returned for insufficient funds. She testified that when the February rent was not paid she tried calling the Tenant twice. She was not able to talk to the Tenant. She testified that on February 8, 2011, she had the locks changed on the rental unit. She alleges that the locks had to be changed because the Tenant had changed the locks himself. She testified that she gave the Tenant a copy of the new key for the rental unit on February 16, 2011.

The Tenant testified that he had dealt with the Landlord throughout the tenancy, however, the Landlord is out of the country.

The Tenant testified he dropped off a cheque to the Landlord's building on February 1, 2011, for the rent. He testified that on February 8, 2011, he arrived home at the rental unit and discovered the locks were changed and he could not access the rental unit. He eventually had a locksmith attend to gain access to the rental unit and found a 24 Notice from the Landlord to enter the rental unit on the floor of the rental unit.

The Tenant testified that he did not change the locks from those in place when he moved into the rental unit.

The Tenant testified that the February rent cheque had not been cashed.

The Agent for the Landlord testified that they do not know where the rent cheque for February is.

Analysis

Based on the above, the testimony and evidence, and a balance of probabilities, I find that the Tenant has failed to pay rent to the Landlord.

I further find that the Landlord is not able to change the locks without giving the Tenant a key for access, pursuant to section 31 of the Act, and therefore, the amount of rent the Tenant owes for February shall be reduced by the amount of time that past prior to the Agent for the Landlord providing the Tenant with a key to the rental unit. I allow the Landlord 19 days of rent for February in the amount of \$655.88 (calculated at \$34.52 per day).

I also allow the Landlord 7 days of rent for the month of March, as the tenancy ended by mutual agreement on March 6, and the Tenant did not vacate the rental unit at 1:00

p.m. as ordered. I find the Tenant overheld in the rental unit and allow the Landlord \$241.64 in rent for March.

I find the Landlord had insufficient evidence on the other issues, and dismiss these without leave to reapply.

As the Landlord was unsuccessful on parts of the claim, I allow \$25.00 towards the filing fee for the Application.

Section 67 of the Residential Tenancy Act states:

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 find that the Landlord has established a total monetary claim of **\$922.52** comprised of the above described amounts and \$25.00 toward the fee paid for this application.

I order that the Landlord may retain the deposit of **\$550.00** in partial satisfaction of the claim and I grant an order under section 67 for the balance due of **\$372.52**.

This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

Lastly, as the Agent for the Landlord appears to be unfamiliar with the Act, I am enclosing a copy of a guidebook for reference purposes.

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: March 16, 2011.

Residential Tenancy Branch