



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

Decision

Dispute Codes:

MNR, MNDC, MNSD, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord for accrued rental arrears owed by the tenant in the amount of \$16,500.00, additional damages for repairs and garbage removal in the amount of \$760.38 and an order to retain the security deposit and interest in partial satisfaction of the claim and reimbursement for the cost of filing.

Despite being served with the Notice of hearing by registered mail, the tenant did not appear.

Background and Evidence

The landlord testified that the tenancy began on December 11, 2005. Rent was \$1,000.00 and a security deposit of \$500.00 was paid. The landlord testified that during the tenancy, the tenant, who was a struggling single parent, suffered a series of financial and health challenges such as the loss of her job and a motor vehicle accident and fell into arrears for the rent. The parties had negotiated repayment plans to accommodate the tenant's circumstances and permitted her to pay when she could. However, although the tenant made partial payments towards the debt, the arrears continued to grow. The landlord submitted copies of the tenant's emails in which proposals for future payment were made. The landlord testified that, after repeated delays, the tenancy was mutually ended, and the tenant made a verbal commitment that she would eventually clear up the debt. The landlord provided evidence to confirm that the current arrears exceeded \$16,500.00 and this amount is being claimed.

The landlord testified that the tenant had agreed to vacate the unit at the end of March 2010, but over-held until mid April. The landlord testified that during this period, the landlord had engaged a contractor to attend the site to make repairs, but this tradesperson was denied access by the tenant on two occasions and the landlord incurred charges of \$125.00 due to the tenant's actions. The landlord testified that the tenant had tampered with the electrical connections and the electrical repairs that resulted cost the landlord \$375.38 which is also being claimed. The landlord testified that when the tenant finally vacated, she had discarded items in the unit and the

resulting cost incurred by the landlord for removal was \$260.00, which is being claimed. The landlord furnished receipts for the above charges that total \$760.38

The landlord stated that, although they had been given repeated assurances by the tenant that she would not renege on her responsibility to pay, the tenant is avoiding this responsibility and the landlord had no choice but to file a claim seeking monetary compensation for the rental arrears and other damages..

Analysis

Section 26 of the Act states that rent must be paid when it is due, under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement. I find that the tenant did not pay the rent when rent was due.

In regard to an Applicant's right to claim damages from another party, Section 7 of the Act states that if a landlord or tenant does not comply with the Act, the regulations or the tenancy agreement, the non-complying party must compensate the other for damage or loss that results. Section 67 of the Act grants a dispute Resolution Officer the authority to determine the amount and to order payment under these circumstances.

I find that in order to justify payment of damages under section 67, the Applicant would be required to prove that the other party did not comply with the Act and this non-compliance resulted in costs or losses, pursuant to section 7.

It is important to note that in a claim for damage or loss under the Act, the party claiming the damage or loss bears the burden of proof and the evidence furnished by the applicant must satisfy each component of the test below:

Test For Damage and Loss Claims

1. Proof that the damage or loss exists,
2. Proof that this damage or loss happened solely because of a violation of the Act or agreement
3. Verification of the actual amount required to compensate for the claimed loss or to rectify the damage.
4. Proof that the claimant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage

In this instance, the burden of proof is on the claimant, that being the landlord, to 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 respondent.

In this instance, I accept the landlord's testimony that the rent fell into arrears in violation of the Act and that the landlord suffered a loss as a result. I accept the landlord's explanation that the parties had engaged in various creative payment arrangements to rectify the debt making reasonable attempts to mitigate the losses without terminating the tenancy. I find it reasonable that, based on information provided by the tenant, the landlord anticipated that the tenant's situation would be resolved and at that time the rental arrears would be cleared up as promised. I find that the landlord had, in good faith, held legal action in abeyance based on that reasonable expectation.

I find that the tenant was fully aware that rental arrears were owed and was notified of the \$16,500.00 being claimed by the landlord. The tenant did not pay these arrears and did not attend nor submit evidence to deny or refute the amount being claimed.

With respect to additional damages of \$760.38 being sought, I find that the tenant violated section 37 of the Act by leaving the unit in need of repair. I find that the test for damages has been met and the landlord is entitled to be compensated \$760.38..

Given the above, I find that the landlord has successfully established a total monetary claim of \$17,360.38 comprised of rental arrears of \$16,500.00, damages of \$760.38 and the \$100.00 fee paid by the landlord for this application. I order that the landlord retain the security deposit and interest of \$517.69 in partial satisfaction of the claim leaving a balance due of \$16,842.99.

Conclusion

I hereby grant a monetary order in favour of the landlord for \$16,842.99. This order must be served on the Respondent and may be filed in the Provincial Court (Small Claims) 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: October 03, 2011.

Residential Tenancy Branch