



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNDC, MNR, MNSD, FF, ET

Introduction

This hearing was convened in response to two applications by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

An application dated April 10, 2012 for an early end of tenancy, and an application dated April 14, 2012 for the following:

1. A Monetary Order for unpaid rent - Section 67;
2. A Monetary Order for compensation for loss – Section 67;
3. An Order to retain the security deposit - Section 38; and
4. An Order to recover the filing fee for this application - Section 72.

I accept the Landlord’s evidence that the Tenant was served with the application for dispute resolution and notice of hearing by registered mail in accordance with Section 89 of the Act. The Tenant did not attend the Hearing. The Landlord was given full opportunity to be heard, to present evidence and to make submissions.

Preliminary Matter

The Landlord states that the first application seeking an early end of tenancy was made in advance of the end of the tenancy’s fixed term and that the tenants have now moved out of the unit. The Landlord no longer seeks an Order of Possession and I therefore dismiss the application seeking an early end to the tenancy.

Issue(s) to be Decided

Is the Landlord entitled to the monetary amounts claimed?

Background and Evidence

The tenancy began on May 1, 2011 with a fixed end date of April 30, 2012. Rent of \$1,180.00 was payable monthly and at the onset of the tenancy the Landlord collected a security deposit of \$590.00. The Tenants failed to pay rent for April 2012 and on April 2, 2012, the Landlord served them with a notice to end tenancy for unpaid rent. The Tenants were informed by the Landlord that a new tenant would be moving into the unit for May 1, 2012 however the Tenants stated that they would not move out of the unit until May 1, 2012. The Tenants texted the Landlord just after midnight on May 1, 2012 to advise the Landlord that they had moved out of the unit and the key was left on the counter. The Tenant failed to return one of the fobs and the Landlord claims \$50.00 for the replacement cost. Landlord claims unpaid rent of \$1,180.00 and a late fee of \$35.00. The Landlord also claims late fees for other previous months during which the rent was paid late. The Landlord claims damages to the unit that occurred during the tenancy and states that upon seeing the unit today, it was discovered that the Tenants also left the unit "in a mess".

Prior to the end of the tenancy, the Landlord had obtained new tenants for the unit to commence their tenancy on May 1, 2012 but upon learning that the Tenants refused to move out of the unit until May 1, 2012, the Landlord had no choice but to cancel the new tenancy. As a result, the Landlord claims lost rental income of \$1,180.00 for May 2012.

Analysis

Section 7 of the Act provides that where a tenant does not comply with the Act, regulation or tenancy agreement, the tenant must compensate the landlord for damage or loss that results. In a claim for damage or loss under the Act, regulation or tenancy agreement, the party claiming costs for the damage or loss must prove, inter alia, that the damage or loss claimed was caused by the actions or neglect of the responding party and that costs for the damage or loss have been incurred or established. Section 7 of the Regulation provides that a landlord may charge no more than \$25.00 for a late rent fee. Based on the undisputed evidence of the Landlord I find that the Tenants failed

to pay rent for April 2012 and that the Landlord is therefore entitled to the amount of **\$1,180.00** and a late fee of **\$25.00**. As the Landlord failed to provide any supporting evidence of any other late fees, I dismiss the Landlord's claim for additional late fees. Given the lack of an invoice or bill for the cost of a replacement fob, I find that the Landlord has failed to substantiate this cost and I dismiss this part of the claim.

Given the lack of evidence on costs to repair the damages to the unit as claimed in this application, I find that the Landlord has failed to establish the cost of \$2,000.00 as claimed and I dismiss this part of the claim. The Landlord is at liberty to make an application in relation to other damages that may have been left at the end of the tenancy. Given the undisputed evidence that the Tenants moved out of the unit a day late and caused the Landlord to lose a new tenancy, I find that the Landlord has substantiated a loss of rental to May 15, 2012 in the amount of **\$590.00**. I give the Landlord leave to reapply should the unit not be rented out for the remainder of the month. The Landlord is also entitled to recovery of the \$50.00 filing fee for a total entitlement of **\$1,845.00**. Setting the security deposit plus interest of **\$590.00** off this entitlement leaves **\$1,255.00** owed by the Tenant to the Landlord.

Conclusion

I order that the Landlord retain the **deposit** and interest of \$590.00 in partial satisfaction of the claim and I grant the Landlord an order under Section 67 of the Act for the balance due of **\$1,255.00**. If necessary, this order may be filed in the Small Claims 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 *Residential Tenancy Act*.

Dated: May 02, 2012.

Residential Tenancy Branch