



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND MNR MNSD FF

Introduction

This hearing was convened as a result of the landlord's application for dispute resolution under the *Residential Tenancy Act* (the "Act") for a monetary order for unpaid rent or utilities, for damage to the unit, site or property, to keep all or part of a security deposit, and to recover the filing fee.

The agent for the landlord appeared at the teleconference hearing and gave affirmed testimony. During the hearing the landlord was given the opportunity to provide their evidence orally. A summary of the testimony is provided below and includes only that which is relevant to the hearing.

The tenant did not attend the hearing. As a result, service was considered. The agent for the landlord testified that the tenant was served with the Notice of a Dispute Resolution hearing by registered mail on May 15, 2012. The agent provided a registered mail tracking number and confirmed the name and dispute address matched the name and dispute address on the application. Documents served by registered mail are deemed served five days after mailing under the *Act*.

Preliminary Matter

During the hearing, the agent for the landlord withdrew the late fee of \$25.00 from their application, after confirming that rent was \$667.22 per month and the tenancy agreement did not specifically provide for late fees. The amended claim was therefore reduced from \$1,292.22 to \$1,267.22.

During the hearing, the agent for the landlord stated that they were not claiming for damages, but for garbage removal costs associated with removing the tenant's property from the rental unit, as requested by the tenant. Given the above, I amend the landlord's application pursuant to section 64 of the *Act*, to remove the claim for damages and add the claim for money owed or compensation under the *Act*.

Issue(s) to be Decided

- Should the landlord be granted a monetary order for unpaid rent or utilities, or for money owed or compensation under the *Act*?
- Should the landlord be permitted to retain all or part of a security deposit?
- Should the landlord recover the filing fee?

Background and Evidence

The agent for the landlord stated that a month to month tenancy agreement began on October 1, 1999. At that time, monthly rent in the amount \$632.00 was due on the first of every month. The agent stated that the rent was increased on a regular basis and was most recently increased in November, 2011 to \$667.22 per month. A security deposit in the amount of \$280.00 was paid by the tenant on October 1, 1999.

The agent for the landlord stated that the tenant was moved into a care home in February, 2012, and provided notice that she would be vacating as a result. The agent testified that they received a letter from the tenant requesting that the landlord clean the rental unit and dispose of the tenants' belongings. The agent stated that on February 14, 2012, they were advised of the forwarding address of the tenant through a friend of the tenant.

The landlord applied for dispute resolution on May 8, 2012. The landlord's amended claim of \$1,267.22 consists of unpaid February, 2012 rent in the amount of \$667.22, and garbage removal and cleaning costs (claimed as "maintenance" charges in the dispute details) of \$600.00.

The agent testified that a new tenant moved into the rental unit on March 1, 2012. The agent for the landlord stated that the landlord did not apply to claim for damages in the rental unit as they were planning to renovate the rental unit after the tenant vacated, and required the unit to be empty first. The agent stated the charge of \$600.00 for garbage removal and cleaning consisted of 4 people at \$15.00 per hour for a total of 10 hours. The agent for the landlord stated that the tenant provided permission to have the landlord dispose of all of her property in the rental unit.

The landlord provided a copy of the tenancy agreement, maintenance charges and registered mail receipts as evidence for the hearing. All evidence has been considered in this Decision.

Analysis

Based on details of the application and the oral testimony provided during the hearing, and on the balance of probabilities, I find the following.

Claim for February 2012 unpaid rent – The agent for the landlord testified that rent for February 2012 was not paid. Pursuant to section 26 of the *Act* a tenant must pay rent when it is due in accordance with the tenancy agreement. Based on the above, I find that the tenant failed to comply with a standard term of the tenancy agreement which stipulates that rent is due monthly on the first of each month. I find the landlord has met the burden of proof and I award him a monetary claim of \$667.22 for February 2012 unpaid rent.

\$600.00 claim for garbage removal and cleaning costs – Based on the undisputed testimony of the agent for the landlord, it is alleged that it took 4 people at \$15.00 per hour a total of 10 hours to remove all of the tenants' property, dispose of the property and to clean the rental unit. The total amount claimed is \$600.00 for garbage removal and cleaning costs. I find this amount to be excessive given that the landlord confirmed they would be renovating the rental unit and only required the unit to be empty and did not provide any documentary evidence such as photographs showing the condition and amount of belongings in the rental unit prior to them being removed. Furthermore, the landlord has not provided any receipts or witness testimony to support the amount of time it took to remove the tenant's items and clean the rental unit. As a result, I **dismiss** the landlord's claim for garbage removal due to lack of evidence and **dismiss** the cleaning costs as the rental unit was renovated after the tenant vacated which would have required cleaning by the landlord after the work was completed.

Security deposit of the tenant - The tenants' security deposit of \$280.00 has accrued interest since October 1, 1999 in the amount of \$26.33. The total security deposit including interest is \$306.33. The agent for the landlord testified that they received the forwarding address of the tenant on February 14, 2012. A new tenant moved into the rental unit as of March 1, 2012. Section 38 of the *Act*, requires that a landlord must return or make a claim against the security deposit within 15 days of the later of the end of tenancy and the date the forwarding address is provided. As the security deposit has not been returned to the tenant and the application for dispute resolution was not filed until May 8, 2012, which is over two months after the new tenant moved into the rental unit and almost three months after the forwarding address was provided; **I find the tenant is entitled to double their security deposit.** As a result, the original security deposit of \$280.00 is doubled to \$560.00, plus the original interest of \$26.33 for a total security deposit of **\$586.33.**

The landlord has partially succeeded with his application; therefore I award recovery of half of the filing fee in the amount of **\$25.00.**

Monetary Order – I find that the landlord is entitled to a monetary claim of **\$692.22** consisting of \$667.22 in unpaid rent for February 2012, and \$25.00 for half of the filing fee. This claim meets the criteria under section 72(2)(b) of the *Act* to be offset against the tenant's security deposit.

Conclusion

I find that the landlord has established a total monetary claim of **\$692.22** as indicated above. I order that the landlord retain the security deposit of \$586.33 in partial satisfaction of the claim and I grant the landlord a monetary order under section 67 for the balance due of **\$105.89**. This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

I **dismiss** the landlord's claim for garbage removal due to lack of evidence.

I **dismiss** the landlord's claim for cleaning costs.

This decision is final and binding on the parties, unless otherwise provided under the *Act*, and 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: July 09, 2012

Residential Tenancy Branch