



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

Decision

Dispute Codes: MNR, MNDC

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord for an Order of Possession and monetary order for rent owed and loss of rent. The landlord was also claiming \$45.00 utilities for each month of August and September 2012. Despite being served in person on August 23, 2012, the respondent did not appear.

Preliminary Matter

The landlord had originally requested an Order of Possession. However the tenant had vacated near the end of August 2012, leaving items in the rental unit. The landlord now seeks to amend the application to add a claim for compensation for the costs of debris removal and cleaning amounting to \$335.59.

The landlord testified that the tenant was served notice that the monetary claim was amended to add costs for cleaning and debris removal. This notification was included in the evidence package personally served on the tenant in advance of the hearing.

I find that the request for the Order of Possession is moot and I also accept the landlord's amended amount for the monetary claim from \$2,090.00 to \$2,425.59 to include cleaning garbage removal costs.

Issue(s) to be Decided

The issue to be determined, based on the testimony and evidence, is whether or not the landlord is entitled to monetary compensation for rental arrears, utilities, loss of rent and compensation for cleaning.

Background and Evidence

The tenancy began in March 2012 with rent of \$1,000.00 and a security deposit of \$500.00. A copy of the tenancy agreement, Notice to End Tenancy for Unpaid Rent, receipts, rental ads and other supporting documents were submitted into evidence.

The landlord testified that the tenant failed to pay \$1,000.00 rent owed for August and began to avoid the landlord. The landlord testified that he served the tenant with a Ten Day Notice to End Tenancy for Unpaid Rent and the tenant did not dispute it and

vacated sometime during the latter half of the month of August. The landlord is seeking \$1,000.00 rent and \$45.00 utilities owed for August 2012.

The landlord testified that he was not certain when the tenant had finally vacated as she had left personal items in the suite, which had to be removed once it was evident that the tenant would not be returning. The landlord stated that he immediately listed the rental unit vacancy, but did not succeed in finding a renter for September and suffered a loss of rent of \$1,000.00 and \$45.00 owed for utilities.

The landlord testified that the tenant had vacated without leaving the unit reasonably clean and the landlord incurred costs of \$335.59 for general cleaning and disposal. The landlord submitted a statement of costs and receipts.

Analysis

With respect to the rent owed, I find that section 26 of the Act states rent must be paid when due. Accordingly I find that the tenant must compensate the landlord for rental arrears and utilities for August in the amount of \$1,045.00.

In regard to the loss of rent for September 2012, I find that an Applicant's right to claim damages from another party is dealt with under section 7 of the Act which 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 it important to note that in a claim for damage or loss under the Act, the party making the claim 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 the actions or neglect of the Respondent in 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 reasonable steps to mitigate or minimize the loss or damage

In this instance, the burden of proof is on the landlord to prove the existence and value of the damage/loss stemming directly from a violation of the agreement or a

contravention of the Act by the respondent and to verify that a reasonable attempt was made to mitigate the damage or losses incurred.

I find that the landlord's loss of rent for September 2012 has met the test for damages and that the landlord is entitled to be compensated in the amount of \$1,000.00.

I find that the tenant is not responsible for using \$45.00 for utilities during September as the tenant had already vacated the unit before September. Therefore this part of the claim does not meet element 1 of the test for damages and must be dismissed.

With respect to the cleaning claim, I find that section 37(2) of the Act states that, when a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear. In this instance, I find that the tenant did not comply with section 37 of the Act and that cleaning costs were incurred for which the landlord is entitled to be compensated in the amount of \$335.59.

Given the above, I find that the landlord has established a total monetary claim of \$2,430.59 comprised of \$1,000.00 rental arrears for August, \$45.00 for utility usage for August, \$1,000 loss of rent for September 2012, \$335.59 cleaning and disposal costs and the \$50.00 paid for this application.

I order that the landlord retain the tenant's security deposit and interest of \$500.00 in partial satisfaction of the claim, leaving a balance of \$1,930.59 in favour of the landlord. The remainder of the landlord's application is dismissed without leave.

Conclusion

I hereby grant the Landlord an order under section 67 for \$1,930.59. 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: September 24, 2012.

Residential Tenancy Branch