



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MNSD, MNDC, FF

Introduction

This hearing was originally scheduled for January 10, 2013 and was adjourned pursuant to an Interim decision issued January 10, 2013 to enable the tenant to receive the landlord's Application for Dispute Resolution and evidence. The adjourned hearing was to deal with the landlord's application for unpaid rent and loss of rent for the months of December 2012 and January 2013.

At the reconvened hearing the parties confirmed that the landlord's Application and evidence was sufficiently served upon the tenant. I also determined that the tenant had submitted evidence to the Branch but not to the landlord. The tenant's evidence was excluded but the tenant was provided the opportunity to submit her evidence orally during the hearing.

The landlord stated at the commencement of the hearing that the landlord's monetary claim had been amended January 14, 2013 to increase the claim a further \$17,000.00 to reflect damage to the property. I informed the parties that I had not received an amended claim from the landlord and I noted that an amendment was not reflected in the Branch's records. I also noted that the originally scheduled hearing had not been adjourned for the purposes of allowing an amendment. Further, I was not satisfied that sufficient time had been provided in order for the tenant to receive an amended monetary claim and provide a response to such a significant increase. In response, the landlord indicated that they would like to proceed with the claim for unpaid/loss of rent for December 2012 and January 2013 during this hearing and would pursue a damage claim by way of a future Application. Therefore, I did not consider this claim to be amended to include a damage to the property and I proceeded to hear the landlord's claims for unpaid and loss of rent.

Near the end of the hearing, the landlord requested withdrawal of the claim for loss of rent for January 2013 with leave to include the loss of rent in a future Application, as part of a damage claim. The landlord's request was granted and the landlord is at liberty to include losses related to January 2013 rent in a future damage claim.

Issue(s) to be Decided

1. Is the landlord entitled to unpaid rent for December 2012?
2. Is the landlord authorized to retain the tenant's security deposit and pet deposit in partial satisfaction of the unpaid rent?

Background and Evidence

The month to month tenancy commenced September 1, 2012. The tenant paid a \$2,000.00 security deposit and a \$1,000.00 pet deposit. The tenant was required to pay rent of \$4,000.00 on the 1st day of every month under the tenancy agreement. The property rented to the tenant included a one-bedroom basement suite. The tenant rented the basement suite to others, including a witness that appeared at the commencement of the hearing.

On November 30, 2012 the landlord received a note from the tenant that she would be ending the tenancy effective December 31, 2012. The tenant authorized the landlord to retain the deposits in partial satisfaction of the rent owed for December 2012. The landlord did not agree to use the deposits for rent and on December 2, 2012 the landlord posted a 10 Day Notice to End Tenancy for Unpaid Rent (the Notice) on the tenant's front door and the door of the basement suite.

The tenant did not pay rent for December 2012 despite receiving the 10 Day Notice and continued to reside in the rental unit until December 31, 2012 (according to the tenant) or January 2, 2013 (according to the landlord).

The landlord is seeking to recover unpaid rent of \$4,000.00 from the tenant for the month of December 2012.

The tenant was of the position that the landlord scared the basement suite tenant into putting a stop payment on her rent cheque. The tenant did not feel obliged to pay the landlord rent in excess of her deposits as a result. The tenant submitted the landlord had also instructed the basement suite tenant to pay her rent to the landlord. The landlord denied this allegation and submitted that she informed the basement suite tenant not to give her rent as the landlord did not want to create a separate tenancy for the basement suite.

In speaking with the basement suite tenant I heard that she had given a rent cheque to the tenant but when she found out the tenant was being evicted for unpaid rent she put

a stop payment on her cheque. The basement suite tenant eventually confirmed that she did not pay rent for December 2012.

Analysis

The Act provides that a tenant must pay rent when due and in accordance with the terms of their tenancy agreement, even if the landlord has violated the Act, regulations or tenancy agreement. The Act provides that a tenant must not withhold rent without the legal right to do so. The Act provides for specific circumstances when a tenant has the legal right to withhold rent, such as overpayment of rent or a security deposit, emergency repairs completed by the tenant, the landlord's authorization for a rent reduction, or by way of authorization of an Arbitrator. Nor, can a tenant apply a security deposit or a pet deposit to rent payable without the consent of the landlord under the Act.

In this case, I find the tenant did not provide a basis under the Act that would have entitled her to withhold rent for December 2012. Therefore, I find the tenant owes the landlord for rent for December 2012 and I award the landlord \$4,000.00 as requested.

I further award the landlord \$50.00 for the filing fee. Pursuant to section 72 of the Act, I authorize the landlord to retain the security deposit and pet deposit in partial satisfaction of the unpaid rent and I offset the sum of the deposits against the amounts awarded to the landlord.

In light of the above, the landlord is provided a Monetary Order in the net amount of \$1,050.00 [$\$4,000.00 + \$50.00 - \$2,000.00 - \$1,000.00$] to serve upon the tenant and enforce as necessary.

Conclusion

The landlord has been awarded unpaid rent for December 2012 and has been authorized to retain the tenant's security deposit and pet deposit in partial satisfaction of the unpaid rent. The landlord has been provided a Monetary Order in the net amount of \$1,050.00 to serve upon the tenant and enforce as necessary.

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: January 23, 2013

Residential Tenancy Branch

