



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes 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 authorization to retain the tenant's security deposit and pet damage deposit, and to recover the filing fee.

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

The tenant did not attend the hearing. As a result, service of the Notice of a Dispute Resolution Hearing (the "Notice of Hearing") was considered. The landlord testified that the tenant was served with the Notice of Hearing at the rental unit before the tenant vacated the rental unit on December 13, 2013. Based on the undisputed testimony of the landlord and without any evidence to prove to the contrary, I accept that the tenant was sufficiently served with the Notice of Hearing in accordance with the *Act*.

Preliminary and Procedural Matters

During the hearing, the landlord claimed to have submitted a copy of the tenancy agreement in evidence; however, the only evidence submitted with the landlord's application for dispute resolution, was a one page ledger describing her monetary claim, plus two receipts. The first receipt indicates \$120.00 for what appears to be Supreme Court filing fees, and the second receipt indicates \$100.00 for the filing fee relating to filing the Application for Dispute Resolution which is before me. The landlord referred to a previous decision dated November 22, 2013 during the hearing. That decision file number has been included on the cover page of this decision for ease of reference and was referred to during the hearing.

During the hearing, the landlord requested permission to submit additional receipts as late evidence. The landlord's request was denied as the Rules of Procedure require that all evidence be served no later than five days before the hearing, which the landlord failed to do. As a result, I have only considered the two receipts submitted by the landlord; the Supreme Court receipt for \$120.00, and the Residential Tenancy Branch filing fee receipt for \$100.00.

During the hearing, the landlord appeared to have difficulty understanding the English language. As a result, the landlord had the hearing process and several of the questions asked by the undersigned repeated on multiple occasions to ensure the landlord understood both the hearing process and the questions being asked of her.

Issues to be Decided

- Is the landlord entitled to a monetary order under the *Act*?
- What should happen to the tenant's security deposit and pet damage deposit under the *Act*?

Background and Evidence

The landlord testified that a month to month tenancy agreement began on November 16, 2011. Monthly rent in the amount of \$1,200.00 was due on the first day of each month. The tenant paid a security deposit of \$600.00 and a pet damage deposit of \$600.00 at the start of the tenancy, which the landlord continues to hold. This information is supported by the previous decision dated November 22, 2013.

The landlord has claimed \$11,989.17 comprised of unpaid rent, unpaid utilities, for the recovery of bailiff fees in the amount of \$1,800.00, recovery of the cost of Supreme Court filing fee costs of \$120.00, plus the filing fee. The only receipts submitted by the landlord in evidence was \$120.00 for the Supreme Court filing fees, and the \$100.00 receipt for the filing fee related to the matter before me. The landlord confirmed that she did not submit any receipts to support the unpaid utilities or bailiff cost portions of her monetary claim.

During the hearing the landlord clarified that further to the ledger submitted in evidence, out of the total rent due between September 1, 2012 and December 2013, which was \$18,349.36, the tenant only paid \$9,550.00, leaving an unpaid rent balance of \$8,799.36. This amount was arrived at using the following information:

1. Unpaid portion of September 2012 rent	\$349.36
2. Unpaid rent for October 2012	\$1,200.00
3. Unpaid rent for November 2012	\$1,200.00
4. Unpaid rent for December 2012	\$1,200.00
5. Unpaid rent for January 2013	\$1,200.00
6. Unpaid rent for February 2013	\$1,200.00
7. Unpaid rent for March 2013	\$1,200.00
8. Unpaid rent for April 2013	\$1,200.00
9. Unpaid rent for May 2013	\$1,200.00
10. Unpaid rent for June 2013	\$1,200.00
11. Unpaid rent for July 2013	\$1,200.00
12. Unpaid rent for August 2013	\$1,200.00
13. Unpaid rent for September 2013	\$1,200.00
14. Unpaid rent for October 2013	\$1,200.00
15. Unpaid rent for November 2013	\$1,200.00
16. Unpaid rent for December 2013	\$1,200.00
TOTAL AMOUNT OF RENT DUE	\$18, 349.36
<i>A. Less rent payment from tenant in December 2012</i>	<i>\$1,300.00</i>
<i>B. Less rent payment from tenant in January 2013</i>	<i>\$1,600.00</i>
<i>C. Less rent payment from tenant in February 2013</i>	<i>\$450.00</i>
<i>D. Less rent payment from tenant on April 3, 2013</i>	<i>\$500.00</i>
<i>E. Less rent payment from tenant on April 17, 2013</i>	<i>\$900.00</i>
<i>F. Less rent payment from tenant in May 2013</i>	<i>\$1,900.00</i>
<i>G. Less rent payment from tenant in August 2013</i>	<i>\$700.00</i>
<i>H. Less rent payment from tenant on September 6, 2013</i>	<i>\$1,000.00</i>
<i>I. Less rent payment from tenant on September 21, 2013</i>	<i>\$1,200.00</i>
TOTAL AMOUNT OF RENT PAID BY TENANT	\$9,550.00
TOTAL AMOUNT OF RENT DUE AS PER ABOVE - TOTAL AMOUNT OF RENT PAID BY TENANT	\$18,349.36 - \$9,550.00
BALANCE OF UNPAID RENT OWING BY TENANT	\$8,799.36

Regarding the landlord's claim for the recovery of the bailiff fee of \$1,800.00, the landlord stated that before the tenant finally vacated the rental unit on December 13, 2013, the landlord paid a deposit to a bailiff company in the amount of \$1,800.00 which

was non-refundable. The landlord confirmed that she did not include a copy of the bailiff receipt for \$1,800.00 in evidence.

Regarding the landlord's claim for the recovery of the unpaid utilities she has claimed, the landlord confirmed that she did not submit any receipts in support of this portion of her claim.

The landlord testified that the tenant verbally granted her permission to retain the tenant's full security deposit and pet damage deposit towards the amount of rent owing. The landlord applied for dispute resolution claiming towards the tenant's security deposit and pet damage deposit on December 3, 2013, which is prior to the date the tenant vacated the rental unit on December 13, 2013.

The landlord testified that she paid \$120.00 to file the order of possession in the Supreme Court for the purpose of obtaining a Writ of Possession. The landlord is seeking the recovery of the \$120.00 fee as a result and submitted a copy of the receipt in support of this portion of her claim.

Analysis

Based on documentary evidence and undisputed testimony of the landlord provided during the hearing, and on the balance of probabilities, I find the following.

Test for damages or loss

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in sections 7 and 67 of the *Act*. Accordingly, an applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

Landlord's claim for unpaid rent – According to the landlord's documentary evidence, and taking into account the landlord's testimony during the hearing, I accept that the tenant has failed to pay a total of \$8,799.36 in unpaid rent. 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 for this portion of their claim and is owed compensation in the amount of **\$8,799.36** comprised of unpaid rent.

Landlord's claim for unpaid utilities – The landlord is claiming for unpaid utilities; however, confirmed that she did not submit any receipts in evidence to support this portion of her claim. As a result, **I find** the landlord has provided insufficient evidence to support this portion of her claim and failed to meet part three of the test for damages or loss described above. Therefore, **I dismiss** this portion of the landlord's claim due to insufficient evidence, **without leave to reapply**.

Landlord's claim for bailiff costs – The landlord is claiming \$1,800.00 for bailiff costs; however confirmed that she did not submit a receipt in evidence to support this portion of her claim. As a result, **I find** the landlord has provided insufficient evidence to support this portion of her claim and failed to meet part three of the test for damages or loss described above. Therefore, **I dismiss** this portion of the landlord's claim due to insufficient evidence, **without leave to reapply**.

Landlord's claim for filing fees – The landlord submitted two receipts for two different filing fees. The first filing fee receipt submitted in evidence was for \$120.00 for Supreme Court which the landlord stated was paid to obtain a Writ of Possession. The second filing fee receipt was for \$100.00, which was the cost of filing the dispute resolution application before me. Based on the above, and taking into account that the landlord's claim had merit, **I find** the landlord has met the burden of proof for this portion of their claim and is owed compensation in the amount of **\$220.00** comprised of the \$100.00 filing fee to file the application for dispute resolution before me, plus \$120.00 for the cost of applying to the Supreme Court for a Writ of Possession.

The tenant's security deposit of \$600.00 and pet damage deposit of \$600.00 has accrued no interest since the start of the tenancy.

Monetary Order – I find that the landlord has established a total monetary claim in the amount of **\$9,019.36** comprised of \$8,799.36 in unpaid rent, plus \$220.00 for filing fees. I find that this claim meets the criteria under section 72(2)(b) of the *Act* to be offset against the tenant's security deposit and pet damage deposit. **I ORDER** the landlord to retain the tenant's full security deposit of \$600.00 and full pet damage deposit of \$600.00 in partial satisfaction of the landlord's monetary claim and **I grant** the landlord a

monetary order under section 67 for the balance owing by the tenant to the landlord in the amount of **\$7,819.36**.

Conclusion

The landlord has established a total monetary claim of \$9,019.36. The landlord has been ordered to retain the tenant's full security deposit of \$600.00 and full pet damage deposit of \$600.00 in partial satisfaction of the landlord's claim. The landlord has been granted a monetary order under section 67 for the balance due of \$7,819.36. This order must be served on the tenant and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

The remainder of the landlord's claim is dismissed due to insufficient evidence, without leave to reapply.

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: March 28, 2014

Residential Tenancy Branch

