



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNR, MNSD, MNDC, FF

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution (the “Application”) made by the Landlord for a Monetary Order for: damages to the rental unit; unpaid rent or utilities; to keep the Tenant’s security deposit; money owed or compensation for loss or damage under the *Residential Tenancy Act* (the “Act”); and to recover the filing fee from the Tenant.

The Landlord appeared for the hearing and provided affirmed testimony. There was no appearance for the Tenant during the 30 minute duration of the hearing and no submission of written evidence prior to the hearing.

Preliminary Issues

As the Tenant failed to appear for the hearing, I turned my mind to the service of the documents for this hearing by the Landlord to the Tenant. The Landlord testified that he had served a copy of the Application and the Notice of Hearing documents to the Tenant by registered mail to the Tenant’s forwarding address which had been provided to the Landlord in a written notice to end the tenancy.

The Landlord testified that he phoned the number provided on the Tenant’s handwritten notice to end tenancy and it was answered by the Tenant’s grandma who confirmed that the Tenant was residing at the address provided on the Tenant’s written notice to end the tenancy.

The Landlord provided a copy of the registered mail tracking receipt as evidence for this method of service. Section 90(a) of the Act provides that a document is deemed to have been received five days after it is mailed. A party cannot avoid service through a failure or neglect to pick up mail or use this as grounds alone for a review of this Decision.

As a result, based on the undisputed evidence of the Landlord above, I find that the Landlord complied with requirement of Section 89(1) (c) of the Act in serving the Tenant with notice of this hearing and that the Tenant is deemed to have received these documents five days later.

At the start of the hearing, I asked the Landlord to explain his monetary claim. The Landlord claims \$340.00 for the rental arrears, \$110.00 for an unpaid electricity bill, \$700.00 for lost rent for July, 2014 and \$200.00 for cleaning charges which the Tenant failed to do. The total monetary claim is \$1,350.00.

I noted that the Landlord had only supplied a copy of the registered mail tracking receipt as documentary evidence prior to this hearing. When the Landlord was asked whether he had provided further documentary evidence to support these claims, the Landlord explained that he had evidence of the utility bills and the cleaning charges but that he had not provided this because he was still in the process of gathering this evidence.

I explained to the Landlord the burden of proof when making a monetary claim and the Landlord explained that he wanted me to consider the extensive evidence which he would obtain for the unpaid utilities and the cleaning charges. As this evidence was not before me, I declined to hear these portions of the Landlord's Application and provided leave to re-apply so that the Landlord is not prejudiced by not having his documentary evidence considered.

Issue(s) to be Decided

- Is the Landlord entitled to a Monetary Order for unpaid rent and lost rent for July, 2014?
- Is the Landlord allowed to keep the Tenant's security deposit in partial satisfaction of the Landlord's claim?

Background and Evidence

The Landlord testified that this month to month tenancy began on July 7, 2013. Rent under the tenancy agreement was payable by the Tenant in the amount of \$700.00 on the first day of each month. This amount included utilities but the Tenant was responsible for paying for electricity. The Tenant paid the Landlord a security deposit in the amount of \$350.00 at the start of the tenancy which the Landlord still retains.

The Landlord testified that on May 25, 2014 he attended the Tenant's rental suite where he had a verbal argument with the Tenant about paying his rental arrears. The Landlord

testified that the Tenant had a balance owing of \$340.00 due in rent after the Tenant had made a number of partial payments into the Landlord's bank account during the tenancy. When the Landlord confronted the Tenant over this, the Tenant hastily wrote a note ending the tenancy as of June 30, 2014. In this note the Tenant provided his forwarding address which including a phone number.

On July 4, 2014 the Landlord attended the rental suite and saw that the Tenant had left the keys under garbage that was outside of the rental suite. The Landlord effected entry into the rental suite to discover that the Tenant had vacated the property.

As a result, the Landlord now claims \$340.00 for the rental arrears and \$700.00 for lost rent for July, 2014 because he was not able to rent it out for July, 2014.

Analysis

I have carefully considered the undisputed affirmed testimony of the Landlord in this decision on the balance of probabilities as follows.

Section 38(1) of the Act requires a Landlord to make an Application to keep the Tenant's security deposit within 15 days after the **later** of the date the tenancy ends and the date the Landlord receives the forwarding address in writing.

I accept the Landlord's oral testimony that the Tenant provided the Landlord with a forwarding address in writing on May 25, 2014 and ended the tenancy on June 30, 2014. Therefore, I find that the Landlord made the Application to keep the Tenant's security deposit within the 15 day time limit stipulated by the Act.

Section 26(1) of the Act states that a Tenant is required to pay rent under a tenancy agreement. I accept the Landlords oral testimony that the Tenant owes the Landlord \$340.00 in rental arrears and I award this amount to the Landlord accordingly.

In relation to the Landlord's claim for lost rent for July, 2014, Section 45(1) of the Act allows a Tenant to end a month to month tenancy after the Tenant provides the Landlord with a full rental months notice in writing.

In this case, I find that the Tenant provided the Landlord personally with a handwritten notice on May 25, 2014 explaining that the tenancy was being ended on June 30, 2014, being one full rental month later. As the Tenant complied with the Act in ending the tenancy, I find that the Landlord has no claim to July, 2014 rent. I find that the Landlord

failed to provide sufficient evidence to convince me that the Tenant had overheld the tenancy after June 30, 2014 that may have given rise to monetary relief.

Furthermore, the Landlord failed to provide sufficient evidence to show that he had made attempts to re-rent the rental suite for July, 2014 in order to mitigate his loss as required by Section 7(2) of the Act. Therefore, I am only prepared to award the Landlord the rental arrears in the amount of **\$340.00**.

As the Landlord has been successful in this matter, the Landlord is also entitled to recover the **\$50.00** Application filing fee pursuant to Section 72(1) of the Act. Therefore, the total amount payable by the Tenant to the Landlord is **\$390.00**.

As the Landlord already holds the Tenant's **\$350.00** security deposit, I order the Landlord to retain this amount in partial satisfaction of the claim awarded, pursuant to Section 38(4) (b) of the Act. As a result, the Landlord is awarded the outstanding balance of **\$40.00** (\$390.00 - \$350.00).

Conclusion

For the reasons set out above, I grant the Landlord a Monetary Order pursuant to Section 67 of the Act in the amount of **\$40.00**. This order must be served on the Tenant and may then be filed in the Provincial Court (Small Claims) and enforced as an order of that court if the Tenant fails to make payment in accordance with the Landlord's instructions.

The Landlord's Application for lost rent is dismissed. The Landlord's Application for unpaid utilities and damages to the rental unit is dismissed **with** leave to re-apply.

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 16, 2015

Residential Tenancy Branch

