



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MNSD, MNDC, FF

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* ("the Act") for:

- a monetary order for unpaid rent, damage or loss pursuant to section 67;
- authorization to retain all or a portion of the tenants' security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover the filing fee for this application from the tenants pursuant to section 72.

The tenants did not attend this hearing, although I waited until 12.17 p.m. in order to enable the tenants to connect with this teleconference hearing scheduled for 12:00 p.m. The landlord attended the hearing and was given a full opportunity to be heard, to present sworn testimony, and to make submissions.

The landlord testified that he had personally served the tenants at the door of their rental unit with his Application for Dispute Resolution package including Notice of Hearing on October 10, 2014. He testified that both tenants were still residing in the rental unit at that time and that, shortly after providing the dispute resolution package, Tenant DS moved out. The landlord testified that, near the end of December 2014, Tenant MS moved out, as well.

Issue(s) to be Decided

Is the landlord entitled to a monetary award for unpaid rent, damage and losses arising out of this tenancy?

Is the landlord entitled to retain all or a portion of the tenants' security deposit towards any monetary award?

Is the landlord entitled to recover the filing fee for this application from the tenants?

Background and Evidence

The landlord testified that this tenancy began in July of 2006 as a month to month tenancy. The rental amount was originally \$900.00 per month and, by the end of the tenancy, the rental amount was \$1025.00 payable on the first of each month. The landlord testified that he continues to hold a \$450.00 security deposit paid by the tenants at the start of the tenancy.

The landlord testified that both tenants have vacated the rental unit. Tenant DS moved out in October 2014 and Tenant MS moved out in December 2014. The landlord testified that he did not know the exact dates that the tenants moved out. The landlord provided an accounting of the tenant's monthly rent. That accounting shows that the tenants paid only a portion of the monthly rent from May 2014 until the end of their tenancy. The landlord testified in conjunction with the provision of the accounting information. He indicated that; \$264.00 remains unpaid from May 2014; \$507.00 remains unpaid from July 2014; \$522.00 remains unpaid for each month of August, September and October 2014. The total of all outstanding rental arrears combined is \$2337.00.

The landlord also testified that, over the course of the tenancy, the tenants incurred \$599.00 in strata fees. The landlord provided letters from the strata corporation that warn the tenant and landlord that the landlord will be fined if the tenant continues to place garbage in the front of the home. The landlord also provided a letter and further documentation from the strata indicating that Tenant MS had hit a tree on the property with his car. According to the documentation provided, that tree had to be replaced at a cost of \$499.00.

The landlord testified that the tenants did not pay their rent on time or in full for numerous months before ultimately vacating the residence. The landlord testified that the tenants were aware of the outstanding rental amount as well as the fines levied by the strata. The landlord sought a total monetary amount of \$2986.00 including in that amount a request to recover the filing fee for this application from the tenants.

Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the

party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

The landlord has provided sworn undisputed testimony as well as supporting documentary evidence to show that the tenants failed to pay the full rental amount from May 2014 until they both vacated the rental unit. The total amount owing, based on records and calculations from the landlord that I accept, is \$2337.00.

The landlord has also provided testimony and sufficient documentation to support the claim for \$599.00 for strata fees. The documentary evidence shows that the tenant was found responsible for the broken tree and that the landlord was required to pay \$499.00 as a result of the tenant's actions. The landlord also provided sufficient documentary evidence to support the claim that the tenant was responsible for two \$50.00 fines levied to and paid by the landlord for garbage left out by the tenants in authorized areas.

Overall, I find the landlord entitled to recover the full amount that he has lost as a result of this tenancy. I find that he is entitled to a monetary order that includes \$2337.00 in unpaid rent. I also find that he is entitled to be compensated for \$599.00 in his out of pocket costs within the monetary order.

I note that neither tenant attended this hearing or disputed the landlord's claims despite his personal service of the materials for this hearing. The landlord testified that, since he has no forwarding address for the either tenant, he continues to hold the tenant's security deposit of \$450.00 plus any interest from July 1, 2006 until the date of this decision. Over that period, \$14.79 interest is payable on the landlord's retention of the security deposit. Pursuant to section 72(2)(b) of the *Act*, I allow the landlord to retain the tenant's security deposit plus applicable interest in partial satisfaction of the monetary award.

As the landlord was successful in his application, I find the landlord is entitled to recover the filing fee for this application.

Conclusion

The landlord is entitled to a monetary order against the tenants as follows;

Item	Amount
Unpaid Rent – May 2014	\$264.00
Unpaid Rent – July 2014	507.00
Unpaid Rent – Aug 2014	522.00
Unpaid Rent – Sept 2014	522.00
Unpaid Rent – Oct 2014	522.00
Strata by law fines for garbage left out	100.00
Strata recovery for tree damage	499.00
Less Security Deposit (and Interest 14.79)	-464.79
Recovery of Filing Fee for this Application	50.00
Total Monetary Order	\$2521.21

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: May 15, 2015

Residential Tenancy Branch