



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 by way of conference call in response to an Application for Dispute Resolution (the “Application”) made by the Landlord on November 14, 2014. The Landlord applied for a Monetary Order for unpaid rent, to keep the Tenant’s security deposit 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 22 minute duration of the hearing or any submission of evidence prior to the hearing. Therefore, I turned my mind to the service of documents by the Landlord.

The Landlord testified that the Tenant was served with a copy of the Application and the Notice of Hearing documents for this hearing on November 15, 2014 by registered mail. The Landlord provided a copy of the Canada Post tracking number and receipt as evidence to support this method of service.

Section 90(a) of the *Residential Tenancy Act* (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. As a result, based on the undisputed testimony of the Landlord, I find the Tenant was served pursuant to Section 89(1) (c) of the Act and the Tenant is deemed served with the required documents on November 20, 2014. The hearing continued to hear the undisputed evidence of the Landlord.

Issues to be Decided

- Is the Landlord entitled to unpaid rent for October 2014 rent?
- Is the Landlord entitled to keep the Tenant’s security deposit in partial satisfaction of the monetary claim for unpaid rent?

Background and Evidence

The Landlord testified that this tenancy started on October 17, 2014. The Landlord testified that a written tenancy agreement was completed, although not provided into evidence, for a fixed term of three months. Rent in the amount of \$410.00 was payable by the Tenant on the 17th day of each month.

The Landlord testified that the Tenant provided a \$205.00 security deposit at the start of the tenancy which he still retains. The Landlord testified that the Tenant moved into the rental unit on October 17, 2014 and stayed in the unit for one night without paying any rent for the first month of October 2014. The Landlord testified that the next day the Tenant left the rental unit removing all of her belongings without any reason. The Landlord testified that he received a written letter from the Tenant on November 10, 2014 advising of the Tenant's forwarding address.

As a result, the Landlord now seeks to recover from the Tenant the first month's rent in the amount of \$410.00. The Landlord only made a monetary claim for \$280.00 because he had calculated this amount by removing the Tenant's security deposit from this claim amount, but explained that the total amount of his claim was \$410.00. However, the Landlord confirmed that he was still seeking to keep the Tenant's security deposit.

Analysis

I accept the Landlord's undisputed oral evidence that a tenancy existed between the parties. I also accept the Landlord's oral evidence that the Tenant provided him with a forwarding address in writing on November 10, 2014 after vacating the rental unit on October 18, 2014. The Landlord made the Application to keep the Tenant's security deposit on November 14, 2014. Therefore, I find the Landlord made the Application to keep the Tenant's security deposit within the 15 day time limit stipulated by Section 38(1) of the Act.

Section 26(1) of the Act requires a tenant to pay rent when it is due under the tenancy agreement whether or not the landlord complies with the Act. Based on the Landlord's undisputed oral evidence, I find that the Tenant failed to pay the first months' rent for this tenancy. Therefore, the Tenant is liable for the October 2014 rent claimed by the Landlord.

As the Landlord has been successful in this matter, the Landlord is also entitled to recover from the Tenant the **\$50.00** filing fee for the cost of having to make this

Application, pursuant to Section 72(1) of the Act. Therefore, the total amount awarded to the Landlord is **\$460.00**.

As the Landlord already holds **\$205.00** of the Tenant's security deposit, I order the Landlord to retain this amount in partial satisfaction of the claim awarded pursuant to Section 72(2) (b) of the Act. As a result, the Landlord is awarded the remaining amount of **\$255.00 (\$460.00 - \$205.00)**.

The Landlord is issued with a Monetary Order pursuant to Section 67 of the Act in the amount of **\$255.00**. 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 payment is not made in accordance with the Landlord's instructions. Copies of this order are attached to the Landlord's copy of this decision.

Conclusion

The Tenant breached the Act by not paying rent. Therefore, the Landlord can keep the Tenant's security deposit and is issued with a Monetary Order for the remaining balance of **\$255.00** claimed.

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: June 29, 2015

Residential Tenancy Branch

