



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNR, MNSD, MNDC, FF, O

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; to keep the Tenant’s security deposit; money owed or compensation for damage or loss under the *Residential Tenancy Act* (the “Act”), regulation or tenancy agreement; to recover the filing fee; and, for “Other” issues of which none were disclosed during the hearing.

The Landlord appeared for the hearing and provided affirmed testimony as well as documentary and digital evidence prior to the hearing. There was no appearance for the Tenant during the 18 minute duration of the hearing and no submission of evidence prior to the hearing. As a result, I turned my mind to the service of the documents for this hearing by the Landlord.

The Landlord testified that he served a copy of the Application, the Notice of Hearing documents and his evidence to the Tenant by registered mail on January 26, 2015. The Landlord testified that he sent this to the Tenant’s forwarding address which was provided to the Landlord at the end of the tenancy in a text message. The Landlord provided a copy of this text message as well as the Canada Post tracking number to verify 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. As a result, based on the undisputed evidence of the Landlord, I find that the Tenant was deemed served with the required documents on January 31, 2015 pursuant to the Act.

The hearing continued to hear the undisputed evidence of the Landlord, the relevant portions of which I have documented in this Decision.

Issue(s) to be Decided

- Is the Landlord entitled to unpaid rent and lost rent incurred in this tenancy?
- Is the Landlord entitled to monetary compensation for damage to the suite?
- 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 tenancy began on July 5, 2014. A written tenancy agreement was completed and provided as evidence. The agreement shows that the tenancy was a fixed term tenancy of one year due to end on August 1, 2015. However, the tenancy ended on January 13, 2015 when the Tenant moved out in accordance with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "Notice"). Rent under the agreement was payable by the Tenant in the amount of \$1,750.00 on the first day of each month. The Tenant paid a security deposit in the amount of \$875.00 at the start of the tenancy which the Landlord still retains.

The Landlord testified that the Tenant failed to pay rent in the amount of \$1,750.00 on January 1, 2015. As a result, he served the Notice to the Tenant on January 8, 2015. The Landlord testified that the Notice had a vacancy date of January 22, 2015. The Landlord testified that when the Tenant moved out of the rental unit on January 13, 2015 she paid him \$600.00 towards the rental arrears of that month. The Tenant provided the Landlord with a forwarding address by text message, a copy of which was provided into evidence. Therefore, the Landlord claims the resulting unpaid rent of \$1,100.00 for January 2015.

The Landlord testified that this did not leave him sufficient time to rent out the suite for February 2015 as it could not be shown for re-rental due to the damages that were present (as detailed below). Therefore, the Landlord now seeks relief in the form of lost rent for February 2015.

The Landlord testified that the Tenant caused considerable damage to the rental suite. This included damage to the walls, damaged carpets from dog feces, damaged base boards from pet chewing, and a loose door knob. The Landlord testified that the suite was brand new at the start of the tenancy and it was left unclean and filthy by the Tenant at the end of the tenancy. The Landlord confirmed that he did not complete a move in or move out Condition Inspection Report and that the Tenant was not allowed pets. However, the Landlord relies on photographic evidence which was taken before

the tenancy started and after it ended; the photographic evidence indicates the damage testified to by the Landlord.

The Landlord testified that he employed a professional cleaning company which charged him \$100.00 for cleaning the rental suite. A copy of the cheque given to the company was provided into evidence. The Landlord testified that he employed a local handyman to complete the above repairs to the rental suite as this was the cheapest person he could find to do this work. The Landlord testified that he paid the handyman \$2,000.00 for all the work he completed to repair the damage. A copy of the cheques paid to the handyman, including an initial deposit, was provided into evidence.

The Landlord testified that he also purchased some materials for the handyman to complete the work. The Landlord provided a copy of the materials purchased and now claims a total of \$103.67. As a result, the Landlord's total monetary claim is \$5,103.67.

Analysis

Although a forwarding address cannot be provided by text message, I find the Landlord received the Tenant's forwarding address on January 13, 2015. The Landlord made the Application to keep the Tenant's security deposit on January 26, 2015. Therefore, I find the Landlord made the Application within the 15 day time limit stipulated by Section 38(1) of the Act.

I have carefully considered the undisputed affirmed testimony and the documentary and digital evidence of the Landlord in this Decision based on the balance of probabilities. In relation to the Landlord's claim for unpaid rent, I accept the Landlord's undisputed testimony that the Tenant failed to pay rent to the Landlord for the month of January 2015 in the amount of **\$1,150.00**. Therefore, this amount is awarded to the Landlord.

In relation to the Landlord's claim for lost rent, Policy Guideline 3 to the Act on claims for rent and damage for loss of rent states in part that "*...if the premises are un-rentable due to damage caused by the tenant, the landlord is entitled to claim for loss of rent.*" I am satisfied that the tenancy had to be ended because the Tenant had failed to pay rent. The Tenant vacated the rental suite on January 13, 2015 leaving behind extensive damage as indicated in the Landlord's digital evidence. I find that this did not give sufficient time for the Landlord to have the rental suite ready for viewings with a view to re-rent it for February 2015. Therefore, I find the Tenant is also liable for February 2015 rent based on the above breaches of the Act in the amount of **\$1,750.00**.

In relation to the Landlord's claim for lack of cleaning and damages to the rental suite, Section 37(2) (a) of the Act requires a tenant to leave the rental suite reasonably clean and undamaged at the end of the tenancy. I accept the Landlord's evidence, in particular the comparative photographic evidence, which shows the Tenant failed to clean the rental suite and leave it undamaged at the end of the tenancy. I also accept the Landlord's copies of cheques paid to carry out the work as evidence to verify the losses being claimed. Therefore, I award the Landlord a total of **\$2,203.67**.

Therefore, the total amount awarded to the Landlord is **\$5,103.67**. However, the Landlord only paid a \$50.00 filing fee for this Application which only allows a maximum claim of \$5,000.00. Therefore, I limit the Landlord's award to this amount.

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 **\$5,050.00**.

As the Landlord already holds the Tenant's **\$875.00** 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 issued with a Monetary Order for the remaining balance of **\$4,175.00**. Copies of this order are attached to the Landlord's copy of this Decision. 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.

Conclusion

The Tenant failed to pay rent and leave the rental suite reasonably clean and undamaged. Therefore, the Landlord may keep the Tenant's security deposit and is issued with a Monetary Order for the remaining amount of \$4,175.00.

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: August 06, 2015

Residential Tenancy Branch

