



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MNDC, MNSD, FF, SS

Introduction

This hearing was convened in response to an application by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. A Monetary Order for unpaid rent - Section 67;
2. A Monetary Order for compensation for loss – Section 67;
3. An Order to retain the security deposit - Section 38; and
4. An Order to recover the filing fee for this application - Section 72.

The Landlords and Tenant were each given full opportunity under oath to be heard, to present evidence and to make submissions. The Tenant confirmed that his lawyer was provided with the hearing documents and that although the Tenant had opportunity to review the documents the Tenant did not review the documents and does not seek any adjournment to do so.

Issue(s) to be Decided

Is the Landlord entitled to the monetary amounts claimed?

Background and Evidence

The tenancy started on November 1, 2014. Rent of \$1,000.00 is payable monthly. At the outset of the tenancy the Landlord collected \$500.00 as a security deposit. The rental unit is the upper part of a house and the Landlord resides in the lower part.

The Landlord states that the Tenant left the unit in December 2014, was not present in January 2015 and did not pay the rent for either December or January 2015. The Landlord states that they heard from the Tenant on January 14, 2015 when the Tenant asked the Landlord to secure the unit as the Tenant would not be returning for a few day. The Landlord states that the Tenant

did not respond to their voice messages and after about three calls the number was disconnected. The Landlord states that they changed the locks to the unit at the end of February 2015. The Landlord claims unpaid rent for December 2014, and January to March 2015 inclusive.

The Landlord states that the tenancy ended at the end of March 2015 as the unit was not cleaned until March 26, 2015. The Landlord states that the unit was advertised in the middle of April for \$1,200.00 however the unit was not rented until September 2015 as the one Landlord's experience with this Tenant caused her to be fearful of being a landlord again.

The Tenant states that he paid cash for November and December 2014 rent and January 2015 rent. The Tenant provided details around the making of the January 2015 payment near the end of December 2015. The Tenant states that no receipts were provided. The Tenant does not dispute that no rent was paid for February 2015.

The Tenant states that he never ended the tenancy and that near the end of January or the first few days of February 2015 the Tenant came home to discover that the Landlord changed the locks and had blocked one of the Tenant's vehicles with a machine. The Tenant states that the Landlord did not respond to his calls and messages. The Tenant states that he sent a couple of people to pick up his belongings on February 15, 2015 however the Landlord turned them away. The Tenant states that that a previous Decision has since provided the Tenant access to his belongings.

The Landlord states that no receipts were provided for any payments because the Tenant said he didn't want any. The Landlord states that they had to pack the Tenant's belongings and clean the unit and claim \$500.00. The Landlord states that the Tenant picked up his belongings around April 20, 2015.

The Landlord states that in November 2014 they paid the Tenant for the purchase of a washer and dryer from a 3rd party and that the Tenant delivered the machines. The Landlord states that in December 2014 the 3rd party told the Landlord that the machines were never paid for by the Tenant. The Landlord states that they paid the 3rd party \$600.00 to cover the 3rd party's costs and now claim \$600.00 from the Tenant. The Landlord did not provide any receipt for the

payment to the 3rd party. The Tenant states that the Landlord's evidence about the appliances does not make sense as the appliances were paid for and delivered to the Landlord.

The Landlord claims \$113.50 for gas costs to speak to witnesses and collect evidence.

The Landlord states that they discovered in December 2014 that the Tenant had a criminal record and had previously told the Landlords of his connections with biker gangs and mafia. The Landlord states that her husband, the second named Landlord, had to leave work on January 21, 2015 in order to be home as the Landlord was scared of the Tenant. The Landlord states that between January 21 and February 3, 2015 one of the Landlords had to be at home 24 hours a day. The Landlord states that the loss of income would not have occurred if the Tenant had paid the rent. The Landlord claims in excess of \$21,000.00.

The Tenant states that he has had beer and dinner with the Landlords and wonders why the Landlords would lock the Tenant out of the unit and refuse to return personal property if the Landlord was so afraid of the Tenant. The Tenant states that the Landlord caused their own problems and created their own fears. The Tenant states that he never threatened or talked to the Landlord or was present when he had his belongings picked up. The Tenant argues that the Landlord acted wrongly

The Landlord provided written statements from other persons in relation to the Tenant's dealings with them. Both Parties referred to the previous hearing and Decision dated April 30, 2015.

Analysis

Section 7 of the Act provides that where a tenant does not comply with the Act, regulation or tenancy agreement, the tenant must compensate the landlord for damage or loss that results. Given the witness submission from the 3rd party as provided by the Landlords I accept that the Tenant did not pay the 3rd party for the appliances intended for the Tenant's unit although the Tenant was paid by the Landlords' for these items. However there is no evidence that this transaction has any relationship to the tenancy agreement or the tenancy or that the Tenant breached the tenancy agreement or the Act by keeping the Landlord's monies without right. I

find that this is therefore not a matter that I may decide under the Act and I dismiss the claim for \$600.00.

It is clear from the previous Decision that the Tenant was successful in obtaining an order for the release of his personal belongings. I find therefore that the Tenant could not pack his belongings or clean his unit and that the Landlord has not established that the Tenant is liable for the costs claimed and I dismiss this claim.

There is no evidence to establish any connection between the Tenant's breach of the requirement to pay the rent and the Landlord's loss of income. It appears more likely from the overall context that the Landlord was afraid because they were blocking the Tenant's access to his unit and belongings and that the Landlord's husband returned for that reason. I therefore dismiss the claim for lost income.

Given the Landlord's evidence of leaving work in January 2015 and requiring the presence of the other Landlord during January and February 2015, I find the Tenant's evidence that the unit was locked no later than a few days into February 2015 to be credible. I find therefore that the tenancy ended when the Landlord locked the Tenant out of the unit and I find on a balance of probabilities that this occurred on or before January 30, 2015. As the tenancy ended I find that the Landlord is not entitled to unpaid rent after this date and I dismiss the claims for February and March 2015 rent.

I believe that the one Landlord was afraid of the Tenant but not because the Tenant did not pay rent. However considering that the Landlord's had to be ordered to allow the Tenant to obtain its belongings I find it likely that the Landlord acted the way it did due to unpaid rent. I therefore prefer the Landlord's evidence that no rent was paid for December 2014 and January 2015 and find the Landlord entitled to **\$2,000.00**.

As the only costs for the dispute process allowed under the Act are the filing fees, and considering that the gas costs are related to the gathering of evidence for the hearing I dismiss the claim for gas costs.

As the Landlord's application has met with limited success I find that the Landlord is only entitled to recovery of the half the **\$100.00** filing fee for a total entitlement of **\$2,050.00**. Deducting the security deposit of **\$500.00** leaves **\$1,550.00** owed by the Tenant to the Landlord.

Conclusion

I Order the Landlord to retain the security deposit plus interest of \$500.00 in partial satisfaction of the claim and I grant the Landlord an order under Section 67 of the Act for **\$1,550.00**. If necessary, this order may be filed in the Small Claims Court and enforced as an order of that Court.

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: September 25, 2015

Residential Tenancy Branch

