



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MND, MNDC, MNSD, FF

Introduction

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

- a monetary order for unpaid rent and utilities, for damage to the rental unit and for money owed or compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement, pursuant to section 67;
- authorization to retain the tenant's 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 tenant, pursuant to section 72.

The tenant did not attend this hearing, which lasted approximately 36 minutes. The landlord attended the hearing and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

The landlord testified that the tenant was served with the landlord's application for dispute resolution hearing package ("Application") on April 28, 2015, by way of registered mail. The landlord confirmed that this mail was sent to a forwarding address verbally provided by the tenant on April 5, 2015. The landlord provided a Canada Post tracking number orally during the hearing and stated that he checked the website and confirmed that the package was successfully delivered to the tenant on April 29, 2015. In accordance with sections 89 and 90 of the *Act*, I find that the tenant was deemed served with the landlord's Application on May 3, 2015, five days after its registered mailing.

Issues to be Decided

Is the landlord entitled to a monetary award for unpaid rent and utilities, for damage to the rental unit and for money owed or compensation for damage or loss under the *Act*, *Regulation* or tenancy agreement?

Is the landlord entitled to retain the tenant's security deposit in partial satisfaction of the monetary award requested?

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

Background and Evidence

The landlord testified that this tenancy began on September 1, 2014 and ended on April 5, 2015. The landlord stated that this tenancy was for a fixed term beginning on September 1, 2015 and to end on September 1, 2015. Monthly rent in the amount of \$950.00 was payable on the first day of each month. A security deposit of \$475.00 was paid by the tenant and the landlord continues to retain this deposit. The landlord confirmed that the tenant verbally provided a forwarding address on April 5, 2015, which the landlord documented himself. The landlord provided a copy of the written tenancy agreement.

The landlord confirmed that the parties agreed to jointly end the fixed term tenancy agreement by way of a "joint contract cancellation" agreement, which was signed by both parties. The landlord provided a copy of this agreement, which is dated for April 5, 2015. The agreement indicates that the parties agreed to end this tenancy on April 30, 2015 at 1:00 p.m. The landlord seeks \$950.00 in unpaid rent for April 2015 from the tenant, stating that she left the rental unit on April 5, 2015, rather than April 30, 2015 and she did not pay rent for this month. The landlord stated that the tenant provided him with a rent cheque for April 2015 but he was unable to cash the cheque, as he went to the tenant's bank and was advised that there was no money in her account. The landlord provided a photocopy of the cheque.

The landlord seeks \$331.52 for two broken glass cabinet doors, which he says were damaged by the tenant. The landlord did not provide a photograph of these doors. The landlord stated that he has not yet replaced these doors, he has only obtained an estimate to replace them. The estimate indicates that each door is \$108.00 plus tax and each pair of hinges is \$40.00 plus tax. The landlord wrote "(doubled) 2 doors" on the estimate.

The landlord testified that the tenant owes \$163.12 for unpaid electricity from January 21 to March 20, 2015 and \$42.06 from March 21 to April 5, 2015. The landlord provided a copy of an electricity bill in the amount of \$489.39 for January 21 to March 20, 2015, for which he says the tenant owes \$163.12. The landlord did not provide a copy of the electricity bill from March 21 to April 5, 2015, as he said that he had too much paperwork. The landlord confirmed that electricity is not included in the tenant's monthly rent, as it is specifically excluded in the tenancy agreement. The landlord claimed that the tenant owes 1/3 of the electricity costs, indicating that the basement of the house where the tenant lived uses electricity for heat, as there is no furnace. The landlord stated that the main floor of the house uses gas to heat the place. The landlord confirmed that he shows the electricity bill to the tenant who then pays him 1/3 of the total bill due each time.

The landlord confirmed that he wished to abandon his claim for a new washer and dryer, that he originally sought from the tenant in his Application.

Analysis

I find that the landlord provided undisputed evidence at this hearing, as the tenant did not attend.

Section 26 of the *Act* requires the tenant to pay rent on the date indicated in the tenancy agreement. The landlord testified that rent was due on the first day of each month. The landlord provided a copy of a rent cheque that he was unable to cash for April 2015. Although the tenant vacated the rental unit on April 5, 2015, she signed a joint agreement with the landlord to vacate on April 30, 2015. Accordingly, as rent was already due on the first day of the month, the tenant is responsible for paying this rent. I award the landlord \$950.00 in unpaid rent, as the tenant failed to pay the rent owed on April 1, 2015.

Section 67 of the *Act* states that when a party makes a claim for damage or loss, the burden of proof lies with the applicant to establish a claim. In this case, to prove a loss, the landlord must satisfy the following four elements:

1. Proof that the damage or loss exists;
2. Proof that the damage or loss occurred due to the actions or neglect of the tenant in violation of the *Act*, *Regulation* or tenancy agreement;
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
4. Proof that the landlord followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

I award the landlord \$163.12 for unpaid electricity from January 21 to March 20, 2015. The landlord provided a copy of the total bill and calculated a 1/3 portion for the tenant's share. Electricity is specifically excluded in the tenancy agreement. I accept the landlord's undisputed evidence that the tenant failed to pay electricity during this time period when she was residing in the rental unit.

I dismiss the landlord's claim without leave to reapply for \$42.06 in electricity costs from March 21 to April 5, 2015. I find that the landlord failed to meet part 3 of the test above, as he did not provide an electricity bill for this month with his Application.

I dismiss the landlord's claim without leave to reapply for \$331.52 for the replacement of two broken glass cabinet doors. The landlord did not provide any photographs or other documentary evidence regarding these broken doors, thereby failing part 1 of the test above.

The landlord continues to hold the tenant's security deposit of \$475.00. In accordance with the offsetting provisions of section 72 of the *Act*, I allow the landlord to retain the tenant's security

deposit of \$475.00 in partial satisfaction of the monetary award. No interest is payable over this period.

As the landlord was partially successful in his Application, I find that he is entitled to recover the \$50.00 filing fee paid for his Application from the tenant.

Conclusion

I issue a monetary order in the landlord's favour in the amount of \$688.12 against the tenant as follows:

Item	Amount
Unpaid April 2015 Rent	\$950.00
Unpaid Electricity Costs from January 21 to March 20, 2015	163.12
Less Security Deposit	-475.00
Recovery of Filing Fee for this Application	50.00
Total Monetary Award	\$688.12

The landlord is provided with a monetary order in the amount of \$688.12 in the above terms and the tenant must be served with this Order as soon as possible. Should the tenant fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial 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: October 13, 2015

Residential Tenancy Branch

