



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MNSD, MNDC, FF, O

Introduction

This hearing was convened by conference call in response to an Application for Dispute Resolution (the “Application”) made by the Landlord for a Monetary Order for: unpaid rent; to keep the Tenant’s security deposit; for money owed or compensation for damage or loss under the *Residential Tenancy Act* (the “Act”); to recover the filing fee from the Tenant; and for “Other” issues of which none were disclosed during the hearing.

Both parties appeared for the hearing and provided affirmed testimony. No issues were raised in relation to the service of the Landlord’s Application and the parties’ evidence served to each other prior to this hearing. The hearing process was explained to the parties and they had no questions about the proceedings.

Issue(s) to be Decided

- Is the Landlord entitled to a Monetary Order for May 2015 unpaid rent?
- Is the Landlord entitled to the replacement cost of a laundry card?
- Is the Landlord entitled to keep the Tenant’s security deposit in partial satisfaction of his monetary claim?

Background and Evidence

The parties agreed that this tenancy started on January 1, 2015 and was for a fixed term tenancy that was due to end on January 1, 2016. A written tenancy agreement was completed and rent for the tenancy was payable in the amount of \$1,175.00 on the first day of each month. The Tenant paid the Landlord a security deposit in the amount of \$587.50 on December 12, 2014 which the Landlord still retains.

The Landlord testified that on May 1, 2015 the Tenant failed to pay rent. As a result, the Landlord served the Tenant with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "Notice") by posting it on the rental unit door on May 5, 2015. The Notice was provided into evidence by the parties and shows a vacancy date of May 20, 2015.

The Landlord testified that before the vacancy date of the Notice the Tenant vacated the rental suite and that May 2015 rent is still not paid. The Landlord testified that in addition, the Tenant failed to return a laundry card that was provided to the Tenant at the start of the tenancy. The Landlord testified that despite several text message requests to the Tenant for the return of this card, it remains unreturned. The Landlord submitted a receipt for the purchase of a new laundry card he provided for the new renters in the amount of \$25.00. As a result, the Landlord seeks to recover unpaid rent and the costs of the laundry card from the Tenant in the amount of \$1,200.00.

The Tenant did not dispute the service of the Notice and confirmed that she had not paid May 2015 rent and had moved out on May 15, 2015. The Tenant explained that the Landlord had only made this Application in retaliation to a previous hearing in which the Tenant was awarded monetary compensation for the Landlord failing to complete repairs. The file number of the previous hearing is documented on the front page of this decision. The Tenant testified that in addition, the Landlord had only made the Application because he was advised at the previous hearing that he could make an Application against the Tenant.

The Tenant was informed during the hearing that an allegation that an Application was made in retaliation does not prevent it from being heard. The Landlord had a right to make the Application for his losses in accordance with the principles of natural justice.

The Tenant made a number of submissions which related to the fact that the Landlord had failed to complete repairs and cleaning to the rental unit during the tenancy. The Tenant provided extensive documentary and digital evidence which had been used by the Tenant in the previous hearing to obtain her monetary compensation.

The Tenant submitted that she had not paid rent for May 2015 because the Landlord failed to deal properly with a mold problem that was dangerous to her health. The Tenant also submitted that the Landlord had failed to make his Application to keep the security deposit at the end of the tenancy pursuant to the tenancy agreement.

In relation to the Landlord's laundry card, the Tenant explained that she was still in possession of it and would be returning it to the Landlord in due course. However, the Landlord explained that he did not trust the Tenant to return it, and in any case he had

already incurred the replacement cost of getting a new one which he wanted to now recover from the Tenant.

Analysis

Section 38(1) of the Act states that, within 15 days after the latter of the date the tenancy ends, and the date the landlord receives the tenant's forwarding address in writing, the landlord must repay the security deposit or make an Application to claim against it. In this respect, I turn my mind to the decision made during the previous hearing which was held on June 23, 2015. In that decision, the Arbitrator who conducted the hearing stated:

"I note that at the hearing, the tenant provided her forwarding address to the Residential Tenancy Branch and to the landlord. At the hearing, I advised the landlord that he has 15 days from the date of the hearing, until July 8, 2015, to either return the tenant's security deposit or file a claim against it."

[Reproduced as written]

The only evidence before me was that the Tenant provided the Landlord with a forwarding address at the June 23, 2015 hearing. Therefore, based on the foregoing, I find that the Landlord made his Application on July 3, 2015 and complied with the requirement of the Act. I also note that there is no interest payable on the security deposit.

Section 26(1) of the Act requires a tenant to pay rent when it is due under a tenancy agreement, **whether or not** the Landlord complies with the Act, unless the Tenant has a right to deduct or withhold rent.

The Tenant stated that she did not pay rent because the Landlord had failed to make repairs to the rental unit. The Act does not allow a tenant to withhold rent in effort to force a landlord to make repairs. I find the Tenant had already elected to deal with the issues of cleaning and repairs at the previous hearing and had already been provided with monetary relief for the issues she spoke about during this hearing.

The Tenant was informed that her evidence in relation to the cleaning, repairs and mold issue were already dealt with in the previous hearing and that these could not be heard again due to the legal principle of *res judicata*; this prevents a matter from being reheard once a final determination on that issue has been made.

Based on the foregoing, I find that the Tenant had no authority to withhold rent, and even though the tenancy was ended by the Landlord with the Notice, the Tenant is still required to pay rent for May 2015 claimed by the Landlord for \$1,175.00.

In relation to the return of the laundry card, I accept the evidence before me that this was provided to the Tenant at the start of the tenancy and that it was not returned to the Landlord at the end of the tenancy. Therefore, the Tenant is liable for the replacement cost of the card in the amount of \$25.00 as verified by the Landlord's receipt for this cost. The total amount awarded to the Landlord is \$1,200.00.

As the Landlord has been successful in his claim, I also grant the Landlord the \$50.00 filing fee for the cost of having to make the Application. Therefore the total amount granted to the Landlord is \$1,250.00 (\$1,175.00 + \$25.00 + \$50.00).

As the Landlord already holds the Tenant's \$587.50 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 \$662.50. This order must be served on the Tenant and may then be enforced in the Provincial Court (Small Claims) as an order of that court if the Tenant fails to make payment. Copies of the order are attached to the Landlord's copy of this decision.

Conclusion

The Tenant has breached the Act by not paying rent under the tenancy agreement. Therefore, the Landlord may keep the Tenant's security deposit and is issued with a Monetary Order of \$662.50 for the remaining amount of losses awarded.

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: November 12, 2015

Residential Tenancy Branch

