



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

MNR MNSD MNDC FF

Introduction

This hearing dealt with monetary applications by the landlord and the tenant. Both the tenant and the landlord's agent participated in the teleconference hearing. However, the landlord's agent did not call in to the teleconference hearing until approximately nine minutes after the hearing began at the scheduled time of 1:00 p.m. I summarized for the landlord the testimony I had heard from the tenant and confirmed the relevant details with the landlord, and then I proceeded to hear from both parties regarding both applications.

The tenant's claim included \$235.00 for a security deposit paid to the landlord by another tenant. I informed the tenant that I would not consider that portion of their application, and the other tenant would need to file separately.

The landlord mailed her evidence and an amendment to her monetary claim to the tenant by registered mail sent December 2, 2015. This package was returned to the landlord as unclaimed. The tenants would have been deemed to have received the landlord's evidence on December 7, 2015. The Rules of Procedure require that an applicant's evidence must be served 14 days before the hearing. The landlord's evidence and amendment were served late; therefore the landlord's evidence is inadmissible and I do not grant the landlord's application for an amendment to claim a higher amount of monetary compensation. The landlord's claim is limited to \$5,000.00 as originally claimed.

The parties gave affirmed testimony, and I have reviewed all testimony and other admissible evidence. However, in this decision I only describe the evidence relevant to the issues and findings in this matter.

Issue(s) to be Decided

Is the landlord entitled to monetary compensation as claimed?

Is the tenant entitled to monetary compensation as claimed?

Background and Evidence

The tenancy began on July 15, 2014 as a fixed-term tenancy to end on July 15, 2015. Rent in the amount of \$1,200.00 was payable in advance on the first day of each month. At the outset

of the tenancy, the landlord collected a security deposit from the tenant in the amount of \$1,200.00.

The tenancy ended on June 30, 2015. On July 6, 2015 the tenant provided the landlord with their forwarding address in writing. The landlord applied on July 17, 2015 for monetary compensation and to keep the security deposit in partial compensation of the amount.

Landlord's Evidence

The landlord claimed compensation as follows:

- 1) \$147.96 for unpaid utilities bills;
- 2) \$5,000.00 estimated cost for repairs of damage caused by tenants; and
- 3) \$2,400.00 for the tenants' early termination of the lease agreement.

I note that total of these amounts is \$7, 547.96; however, the landlord reduced the claim in the original application to \$5,000.00 without specifying which portion of her claim she was abandoning. Further, the landlord did not provide a breakdown for the estimated cost of each item to be repaired.

Tenant's Evidence

The tenant acknowledged responsibility for the outstanding utilities bills. The tenant disputed the remainder of the landlord's application. The tenant stated that the house was 40 to 50 years old, and the landlord was doing a lot of renovations. The tenant stated that they cleaned the whole house.

As for their application, the tenant claimed recovery of the security deposit and costs associated with the dispute resolution process.

Analysis

Landlord's Application

I find that the landlord is only entitled to the amount of \$147.96 for the unpaid utilities, as the tenant acknowledged responsibility for that amount. The landlord is not entitled to compensation for repairs, as there is insufficient evidence to support that portion of the landlord's claim and the tenant disputed the damage. The landlord is not entitled to \$2,400.00 for a lease-breaking penalty, as such a penalty is not permitted under the Act. If a tenancy agreement contains a liquidated damages clause and the landlord establishes that the liquidated damages amount represents a genuine estimate of the costs of re-renting, then the landlord may be entitled to that amount. However, in this case I do not have an admissible tenancy agreement before me, and in any case I find that \$2,400.00, the equivalent of two months of rent, is a penalty.

Tenant's Application

Costs associated with the dispute resolution process, aside from the filing fee, are not normally recoverable, and I decline to grant them in this case.

The landlord filed her application to keep the security deposit less than 15 days after the tenant mailed their forwarding address in writing, and therefore the tenant is not entitled to double recovery of the security deposit. The tenant is, however, entitled to recovery of the balance of the base amount of the deposit.

Filing Fees

As the landlord's application was mostly unsuccessful, she is not entitled to recovery of the filing fee for the cost of her application.

As the tenant's application was successful, they are entitled to recovery of the \$50.00 filing fee for the cost of their application.

Conclusion

The landlord is entitled to \$147.96. The tenant is entitled to \$1,250.00. I grant the tenant an order under section 67 for the balance due of \$1,102.04. 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: January 8, 2016

Residential Tenancy Branch

