



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND MNR MNSD MNDC FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord under the *Residential Tenancy Act* (the “*Act*”) for a monetary order for damage to the unit, site or property, for authority to keep all or part of the security deposit, for money owed or compensation for damage or loss under the *Act*, regulation, or tenancy agreement, for unpaid rent or utilities, and to recover the cost of the filing fee.

The landlord, a witness for the landlord, the tenant, a tenant agent, and a witness for the tenant attended the teleconference hearing. During the hearing the parties were given the opportunity to provide their evidence orally and ask questions about the hearing process. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

The tenant confirmed having received and reviewed the landlord's documentary evidence prior to the hearing. The tenant confirmed that she did not serve the landlord with her documentary evidence, and as a result, the tenant's documentary evidence was excluded from the hearing pursuant to the Rules of Procedure.

Issues to be Decided

- Is the landlord entitled to a monetary order under the *Act*, and if so, in what amount?
- What should happen to the tenant's security deposit under the *Act*?
- Is the landlord entitled to the recovery of the cost of the filing fee under the *Act*?

Background and Evidence

The written tenancy agreement was submitted in evidence which indicates that a fixed term tenancy began on December 1, 2012 and reverted to a month to month tenancy after December 1, 2013. The parties disputed when the tenant vacated the rental unit. The tenant claims she vacated by May 31, 2015, while the landlord claims the tenant did not vacate until June 15, 2015.

The landlord had originally applied for a monetary claim in the amount of \$2,250.00, however, made an adding error in his calculation. As a result, the landlord's actual monetary claim is for \$1,900.00 and comprised of the following:

1. Loss of June 2015 rent	\$700.00
2. Cleaning of rental unit	\$200.00
3. Repairing laminate	\$600.00
4. Painting walls	\$400.00
TOTAL	\$1,900.00

In addition to the above, the landlord is seeking to retain the tenant's \$350.00 security deposit towards any balance owing to the landlord.

The parties agreed that the landlord failed to complete an incoming and outgoing condition inspection report as required by section 23 and 35 of the *Act*. The tenant denies damaging the rental unit as claimed by the landlord.

While the landlord did submit some photos from the end of the tenancy, the landlord did not provide any photos which show the condition of the start of the tenancy.

Regarding loss of June 2015 rent, the tenants claim they provided written notice to the landlord, which the landlord denied ever having received. The tenants failed to submit a copy of their written notice in evidence.

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on the balance of probabilities, I find the following.

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of

probabilities. Awards for compensation are provided in sections 7 and 67 of the *Act*. In this instance, the burden of proof is on the landlord to provide sufficient evidence to prove his claim.

Claim for loss of rent – While the parties disputed when the tenancy ended, the tenant failed to provide any evidence that the tenant provided one month's written notice to the landlord to end the tenancy without penalty. The landlord stated that no written notice to end the tenancy was provided by the tenant. As a result, I prefer the evidence of the landlord over the tenant that the tenant failed to provide written notice to end the tenancy as required by section 45 of the *Act*. Therefore, I find the tenant owes rent for the month of June 2015 in the amount of **\$700.00**.

Claim for damages and cleaning – The landlord failed to complete both an incoming and outgoing condition inspection report. Therefore, the landlord has breached sections 23, 24, 35, and 36 of the *Act*. I find the landlord has provided insufficient evidence to support the claim for damages and cleaning. As a result, **I dismiss** the landlord's claim for damage costs and cleaning costs due to insufficient evidence **without leave to reapply**.

I caution the landlord to comply with sections 23, 24, 35, and 36 of the *Act* in the future.

As the landlord was successful with less than half of his monetary claim, **I grant** the landlord the recovery of half of the cost of the filing fee in the amount of **\$25.00**. The landlord continues to hold the tenant's security deposit of \$350.00 which has accrued \$0.00 in interest to date.

Monetary Order – I find that the landlord has established a total monetary claim in the amount of **\$725.00** comprised of \$700.00 for loss of June 2015 rent, plus \$25.00 of the filing fee. I find this claim meets the criteria under section 72(2)(b) of the *Act* to be offset against the tenant's security deposit of \$350.00. **I authorize** the landlord to retain the tenant's full security deposit of \$350.00 in partial satisfaction of the claim, and I grant the landlord a monetary order under section 67 for the balance due of **\$375.00**.

Conclusion

The landlord's application is partially successful.

The landlord has established a total monetary claim in the amount of 725.00. The landlord has been authorized to retain the tenant's full security deposit of \$350.00 in partial satisfaction of the claim. The landlord has been granted a monetary order under

section 67 for the balance owing by the tenant to the landlord in the amount of \$375.00. This order must be served on the tenant and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

The landlord has been cautioned to comply with sections 23, 24, 35, and 36 of the *Act* in the future.

This decision is final and binding on the parties, unless otherwise provided under the *Act*, and 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: February 15, 2016

Residential Tenancy Branch

