



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MND, MNR, MNSD, FF (Landlord's Application)
MNSD, MNDC, FF (Tenant's Application)

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution (the "Application") made by the Tenant on October 8, 2015 and by the Landlord on October 21, 2015.

The Landlord applied for a Monetary Order for: damage to the rental unit; unpaid rent; to keep the Tenant's security deposit; and to recover the filing fee from the Tenant. The Tenant applied for the return of the security deposit, for money owed or compensation for damage or loss under the *Residential Tenancy Act* (the "Act"), and to recover the filing fee from the Landlord.

The Landlord and his agent appeared for the hearing and provided affirmed testimony as well as documentary evidence in advance of the hearing. The Landlord testified that the Tenant was served with a copy of the Landlord's Application by registered mail on October 28, 2015 by registered mail.

The Landlord provided a copy of the Canada Post tracking number into evidence and the Landlord explained that it was sent to the address the Tenant had provided on the Tenant's Application. The Canada Post website indicates that the documents were received and signed for on October 29, 2015. Based on this undisputed evidence before me, I find the Tenant was served with the required documents for this hearing pursuant to Section 89(1) (c) of the Act.

The Landlord testified that he received the Tenant's Application by registered mail. However, there was no appearance by the Tenant for the ten minute duration of this hearing despite the Tenant being provided with a Notice of Hearing document which detailed the same date and time for this hearing for both Applications to be heard together.

As the Landlord was present and ready to proceed, I dismissed the Tenant's Application without leave to re-apply. The hearing continued to hear the undisputed evidence of the Landlord and his agent as follows.

Issue(s) to be Decided

- Is the Landlord entitled to a Monetary Order for lost rent and damages to the rental unit?
- Is the Landlord entitled to keep the Tenant's security deposit in partial satisfaction of his claim?

Background and Evidence

The Landlord and his agent testified that this tenancy started about a year ago. They were unable to recall the exact time period but the tenancy was set as a fixed term tenancy which then continued into a month to month tenancy thereafter. Rent in the amount of \$725.00 was payable by the Tenant on the first day of each month. The Tenant paid the Landlord a security deposit of \$364.50 at the start of the tenancy which the Landlord still retains.

The Landlord did not provide a copy of a condition inspection report but testified that the house was brand new when it was rented to the Tenant. The Landlord's agent testified she completed the move out condition inspection with the Tenant at the end of the tenancy on May 31, 2015.

The Landlord testified that the Tenant failed to provide proper written notice to vacate the rental unit. The Landlord testified that the Tenant did not provide him with a forwarding address until he received the Tenant's Application by registered mail. The Landlord testified that the Tenant vacated the rental unit on May 31, 2015 and the Landlord now claims for lost rent for the month of June 2015 in the amount of \$725.00 which was the monthly amount payable under this tenancy.

The Landlord and his agent testified that at the end of the tenancy the Tenant failed to clean the rental unit including the stove, windows and balcony. The Landlord's agent testified that there were gauges in the wall and broken cupboards which needed to be repaired as well as a broken dishwasher. The Landlord provided an invoice which details the repairs testified to. As a result, the Landlord now claims the cost of this in the amount of \$275.00.

Analysis

Section 38(1) of the Act requires a tenant to provide the landlord with a forwarding address in writing prior to making an Application to claim against it. In this case, I accept the Landlord's testimony that he was not provided with a forwarding address by the Tenant in writing prior to or after the Tenant vacated the rental unit. I find that it is not sufficient for a tenant to provide the Landlord with an address on an Application as this does not meet the requirements of Section 38(1) of the Act. This is further supported by the fact the Landlord made his Application to claim against the Tenant's security deposit after he received the Tenant's Application by registered mail.

Section 45(1) of the Act allows a tenant to end a month to month tenancy after the tenant provides the landlord with one full rental month of notice in writing. I accept the Landlord's undisputed oral evidence that the Tenant failed to provide proper written notice to end the tenancy. Neither is there any evidence before me to indicate the Tenant complied with Section 45(1) of the Act. Therefore, I accept the Landlord was unable to re-rent the rental unit for June 2015 and suffered this loss which is hereby awarded to the Landlord in the amount of \$725.00.

Section 37(2) (a) of the Act requires a tenant to leave the rental suite reasonably clean and undamaged at the end of the tenancy except for reasonable wear and tear. I accept the oral evidence along with the invoice evidence that the Tenant caused damage to the rental unit. Based on this undisputed evidence, I award the Landlord the \$275.00 claimed for remedying the cleaning and damage to the rental unit. As a result, the total amount awarded to the Landlord is \$1,000.00.

As the Landlord has been successful in this matter, the Landlord is also entitled to recover from the Tenant the \$50.00 filing fee for the cost of this Application, pursuant to Section 72(1) of the Act. Therefore, the total amount payable by the Tenant to the Landlord is \$1,050.00.

As the Landlord already holds \$364.50 of the Tenant's security deposit, I order the Landlord to retain this amount in partial satisfaction of the Landlord's claim awarded, pursuant to Section 72(2) (b) of the Act.

As a result, the Landlord is awarded the balance of \$685.50 in the form of a Monetary Order. This order must be served on the Tenant and may then be filed in the Provincial Court (Small Claims) and enforced as an order of that court. Copies of this order are attached to the Landlord's copy of this decision.

Conclusion

The Tenant has failed to comply with the Act in ending the tenancy and not cleaning and repairing damage to the rental unit. The Landlord is allowed to keep the Tenant's security deposit and is issued with a Monetary Order for the remaining balance of \$685.50. The Tenant failed to appear for the hearing and present the merits of her Application. Therefore, the Tenant's Application is dismissed without leave to re-apply.

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: April 25, 2016

Residential Tenancy Branch