



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNDC, MND, MNSD

Introduction

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

- an order of possession for unpaid rent, pursuant to section 55;
- a monetary order for unpaid rent and money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, pursuant to section 67;
- a monetary order for damage to unit, site or property; and
- authorization to retain all or a portion of the tenants' security deposit in partial satisfaction of the monetary order requested, pursuant to section 38.

The two tenants, "tenant JJ" and "tenant JH" did not attend this hearing. The landlord and the landlord's agent ("landlord ST") attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

Landlord ST testified that on May 12, 2016 the landlord forwarded the landlord's application for dispute resolution via registered mail to the tenants. Based on the testimony of landlord ST and in accordance with sections 89 and 90 of the *Act*, I find that the tenants have been deemed served with the application on May 17, 2016, the fifth day after its registered mailing.

At the outset of the hearing landlord ST testified that the landlord and tenants had recently attended a hearing held on May 16, 2016 for the tenants' application to cancel the 10 Day Notice which resulted in an order of possession for the landlord. Landlord ST stated that the order was served and the tenants vacated the rental unit on May 30, 2016. As the landlord no longer requires an order of possession this portion of the landlords claim is dismissed.

Preliminary Issue – Amendment of Landlords' Application & New Evidence

Landlord ST testified that he faxed an amendment to the landlord's application increasing the monetary claim from \$3,245.71 to \$9,563.00, to the Residential Tenancy Branch (the "Branch") on May 12, 2016. Landlord ST testified that he had a fax receipt showing delivery to the Branch on May 12, 2016. I advised landlord ST to forward a copy of the fax receipt and amendment to my attention at his earliest convenience. On June 9, 2016 I received a faxed package from landlord ST with a letter dated June 9, 2016, a monetary order worksheet dated June 9, 2016, tenancy agreement, condition inspection report, 10 Day Notice, electricity bills, receipts, invoices and pictures of the rental unit. This package did not include an amendment or faxed receipt dated May 12, 2016. On June 10, 2016 I received another faxed package from landlord ST with receipts dated June 10, 2016 for garbage removal and pictures of garbage.

I find that landlord ST did not provide evidence to show the landlord amended his application from \$3,245.71 to \$9,563.00 on May 12, 2016 as stated in the hearing. Rather, I find landlord ST attempted to amend the landlord's application after the hearing and support it with new evidence. Despite this, I find that the tenants should reasonably have known that the landlord would suffer the loss of income if they did not pay May rent or vacate the rental unit to permit the landlord to re-rent the unit. Based on this undisputed evidence and in accordance with section 64(3)(c) of the *Act*, I amend the landlords' application to include a monetary claim for May 2016 unpaid rent of \$1,549.00 bringing the total monetary claim to \$4,794.71

The Residential Tenancy Branch Rules of Procedure 3.14 establishes that evidence intended to be relied on at the hearing must be received by the respondent and the Branch not less than 14 days before the hearing. Because landlord ST submitted evidence after the hearing and not within 14 days, I have not relied on this evidence to form any part of my decision.

Issue(s) to be Decided

Is the landlord entitled to a monetary order for unpaid rent and money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement?

Is the landlord entitled to a monetary order for damage to unit, site or property?

Is the landlord authorized to retain all or a portion of the tenants' security deposit in partial satisfaction of the monetary order requested?

Background and Evidence

Landlord ST testified that this tenancy began July 1, 2015 on a fixed term until June 20, 2016 at which time it was to continue on a month-to-month basis. Rent in the amount of \$1,549.00 was payable on the first of each month. The tenants remitted \$725.00 for the security deposit at the start of the tenancy.

The landlord seeks a monetary order of \$3,248.00 for unpaid rent from March 2016 to May 2016. Landlord ST claimed that the tenants paid a total of \$1,399.00 in rent for the above three months. Landlord ST explained that the landlord's house and tenants' rental unit were adjacent to each other and shared the same electric meter. As part of the landlord's original evidence package the landlord submitted a copy of the tenancy agreement and addendum that refers to electricity. The addendum stipulates that electricity would be "shared between both houses." The addendum does not indicate the amount or split each party was responsible for. Landlord ST testified that the parties agreed that the tenant would be responsible for electricity based on 2015 consumption. The landlord submits that 2015 consumption totalled \$1,046.71 for January and March and seeks this amount in unpaid electricity from the tenants.

Landlord ST testified to the condition of the rental unit following the tenants' vacancy. Landlord ST testified that there was damage to a door and window as well as personal property left behind by the tenants. The landlord is seeking \$500.00 in damages, specifically to cover the estimated cost of these repairs. Landlord ST testified that these repairs have not taken place yet and consequently could not provide invoices for any work done.

Analysis

Section 26 of the *Act* requires the tenant to pay rent on the date indicated in the tenancy agreement, which is the first day of each month. Section 7(1) of the *Act* establishes that a tenant who does not comply with the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement must compensate the landlord for damage or loss that results from that failure to comply. However, section 7(2) of the *Act* places a responsibility on a landlord claiming compensation for loss resulting from a tenant's non-compliance with the *Act* to do whatever is reasonable to minimize that loss.

I find that the landlord proved that the current rent for this unit is \$1,549.00. I find the landlord provided undisputed evidence that the tenants failed to pay full rent from March to May 2016. Although the tenants had vacated the rental unit prior to June 1, 2016, I find the landlord is entitled to recover June rent. Despite any efforts of the landlord, the

rental unit could not be fully prepared for a new tenancy effective June 1, 2016 as evidenced by the tenants' remaining property at the rental unit. Therefore, I find that the landlord is entitled to \$4,797.00 in rent. Based on the signed addendum and undisputed testimony of the landlord, I find the landlord is entitled to recover the outstanding electricity costs in the amount of 1,046.71.

Although landlord ST testified to the condition of the rental unit and the estimated costs in repairing it, I find the claim to damages premature as the tenants had not vacated the rental unit at the time the application was made and the landlord had not conducted any repairs prior to the hearing. For these reasons I dismiss the landlord's application for damages with leave to reapply. Therefore, I find that the landlord is not entitled to any compensation other than outstanding rent and electricity costs in the amount of \$5,843.71.

In accordance with the offsetting provisions of section 72 of the *Act*, I allow the landlord to retain the security deposit in the total amount of \$725.00 in partial satisfaction of the monetary award for the balance due of \$5,118.71.

Conclusion

The landlord's application for an order of possession is dismissed.

I issue a monetary order in the landlord's favour in the amount of \$5,118.71 against the tenants.

The landlord's application for damages is dismissed with leave to reapply.

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: June 16, 2016

Residential Tenancy Branch

