



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute codes OPL MNR MNDC FF

Introduction

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

- an order of possession for landlord's use of property pursuant to section 55;
- a monetary order for unpaid rent and damage/loss pursuant to section 67;
- authorization to recover her filing fee for this application from the tenant pursuant to section 72.

The hearing was conducted by conference call. The tenant did not attend this hearing, although I waited until 11:20 a.m. in order to enable the tenant to connect with this teleconference hearing scheduled for 11:00 a.m. The landlord attended the hearing and was given a full opportunity to be heard, to present evidence and to make submissions.

The landlord testified that on June 16, 2016, the tenant was personally served with a copy of the Application for Dispute Resolution and Notice of Hearing.

Based on the above evidence, I am satisfied that the tenant was served with the Application for Dispute Resolution and Notice of Dispute Resolution Hearing pursuant to section 89 of the Act. The hearing proceeded in the absence of the tenant.

Preliminary Issue – Amendment to Landlord's Application

Paragraph 64(3)(c) of the Act allows me to amend an application for dispute resolution.

At the hearing, the landlord testified that the tenant did not vacate the rental unit until July 4, 2016 and therefore asked to amend her claim to include prorated rent in the amount of \$164.52 that was payable for the period of July 1-4, 2016. Although the tenant did not have prior notice of this claim, I find that the tenant should reasonably

have known that the landlord would suffer this loss if the tenant neither paid rent nor vacated the rental unit. I therefore allowed the landlord's request for an amendment.

As the tenant vacated the rental unit on July 4, 2016, the landlord withdrew her application for an order of possession.

Issues

Is the landlord entitled to a monetary award for unpaid rent and damage/loss?

Is the landlord entitled to recover the filing fee for this application from the tenant?

Background and Evidence

The tenancy began on October 1, 2019 with a monthly rent of \$1275.00 payable on the 1st day of each month. The tenant paid a security deposit of \$637.50 at the start of the tenancy which the landlord continues to hold.

The landlord issued a 2 Month Notice to End Tenancy on March 31, 2016 with an effective date of June 1, 2016. The tenant did not vacate the unit until July 4, 2016. The tenant paid half the rent for the month of June 2016 on June 16, 2016. The landlord's claim is for outstanding rent in the amount of \$637.50 for the month of June 2016 and \$164.52 for the period of July 1-4, 2016.

The landlord is also claiming a loss in the amount of \$499.00 to compensate the landlord for 3 days taken off of work in order to perform renovation work at the rental unit. The landlord was not able to perform any work at the rental unit as the tenant did not vacate by the effective date in the 2 Month Notice.

Analysis

I accept the landlord's uncontested evidence and find that the tenant was obligated to pay monthly rent in the amount of \$1275.00 but failed to pay rent for half of June 2016 and for the period of July 1-4, 2016. I accept the landlord's claim for outstanding rent of \$802.02.

The landlord's claim for loss suffered as a result of time taken off work to do renovation work on the rental property is dismissed. The landlord made the decision to take time off prior to ensuring the rental unit was vacant. Further, the renovation work was being undertaken for the landlord's own benefit as the landlord was moving into the rental unit.

The landlord did not submit any evidence that the work required to renovate the rental unit was a result of damages caused by the tenant. The landlord has been awarded losses in the form of unpaid rent from the over-holding tenant.

As the landlord was successful in this application, I find that the landlord is entitled to recover the \$100.00 filing fee paid for this application for a total monetary award of \$902.02.

The landlord continues to hold a security deposit of \$637.50. Although the landlord's application does not seek to retain the security deposit, using the offsetting provisions of section 72 of the Act, I allow the landlord to retain the security deposit in partial satisfaction of the monetary award.

Therefore, I find that the landlord is entitled to a Monetary Order in the amount of \$264.52.

Conclusion

Pursuant to section 67 of the Act, I grant the landlord a Monetary Order in the amount of \$264.52. Should the tenant fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial 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: July 19, 2016

Residential Tenancy Branch

