



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

MNR, MNDC, MNSD, FF

Introduction

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

- a monetary order for unpaid rent, for damage to the rental unit, and for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38;
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

Both parties attended the hearing via conference call and provided affirmed testimony. The landlord's agent (the landlord) provided undisputed affirmed testimony that the tenant was served with the notice of hearing package and the submitted documentary evidence via Canada Post Registered Mail on January 1, 2016. The landlord provided a copy of the Canada Post Customer Receipt Tracking number as confirmation. The tenant also confirmed receipt of the landlord's notice of hearing package and the submitted documentary evidence as claimed by the landlord. The tenant provided affirmed testimony that his submitted documentary evidence was personally served on August 3, 2016 at the landlord's office. The landlord disputed this claim stating that she was not aware of any documentary evidence provided by the tenant not has the landlord (HFBC) advised her of any documentary evidence received from the tenant. The tenant stated that he had personally delivered the evidence package to the receptionist, but is unable to provide any proof of service.

I accept the affirmed testimony of both parties and find that the tenant has been properly served with the landlord's notice of hearing package and the submitted documentary evidence as per sections 88 and 89 of the Act. The tenant confirmed receipt of both sets of documents in his direct testimony.

As for the tenant's documentary evidence, I find that although a verbal ruling was made during the hearing to exclude the tenant's documentary evidence, I found the tenant's submissions on service to be compelling. I reverse my exclusion order regarding the tenant's email evidence

and accept it for the purposes of the hearing. I find that the email content to be a chronology for an elevator service at the dispute address. Also included is an email dated March 24, 2016 from the tenant to the landlord making a request to schedule a pickup of his personal belongings and a response confirming the following week.

At the outset the landlord withdrew the request to retain all or part of the security deposit as this portion of the claim was filed in error. As such no further action is required for this portion of the claim.

During the hearing it was noted that the tenant was no longer residing at the rental address and was able to provide a new mailing address. As such, the tenant's mailing address shall be updated to reflect the one provided by the tenant.

Issue(s) to be Decided

Is the landlord entitled to a monetary order for unpaid rent, for money owed or compensation for damage or loss and recovery of the filing fee?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

This tenancy began on October 1, 2012 on a month-to-month basis as shown by the submitted copy of the signed tenancy agreement dated October 1, 2012.

The landlord seeks a monetary claim of \$1,725.00 which consists of:

\$575.00	Unpaid November 2015 Rent
\$575.00	Unpaid December 2015 Rent
\$575.00	Unpaid January 2016 Rent/Loss of Rental Income

The landlord provided affirmed testimony that the tenant has failed to pay rent for the above listed months after vacating the rental unit on January 4, 2016.

The tenant disputes the landlord's claim stating that he had vacated the rental unit on November 4, 2015.

The landlord stated that the tenant failed to provide notice that he was vacating the rental unit until the landlord realised it on January 4, 2016. The landlord stated that the tenant did not return all of the keys to the rental unit and that the tenant's possessions were still in the rental unit. The tenant stated that he was prevented from removing his items due to the out of service elevator and should not be held responsible. The landlord provided affirmed testimony that in a

previous dispute resolution hearing that was held on December 21, 2015 no issues were raised by the tenant in removing his items after an order of possession was granted. The landlord stated that the building has two elevators besides the service elevator and that at no time was the landlord notified that there were any issues for the tenant to remove his belongings.

Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. In this case, the onus is on the landlord to prove on the balance of probabilities that the tenant caused the damage and that it was beyond reasonable wear and tear that could be expected for a rental unit of this age.

I accept the evidence of both parties and find on a balance of probabilities that I prefer the evidence of the landlord over that of the tenant. The tenant failed to provide sufficient evidence that the landlord was notified of when he was vacating the rental unit nor has the tenant provided sufficient evidence to satisfy me that there were any issues in removing his belongings from the rental building. On this basis, I find that the landlord has established claim for unpaid rent totalling, \$1,725.00.

The landlord having been successful is also entitled to recovery of the \$50.00 filing fee.

Conclusion

The landlord is granted a monetary order for \$1,775.00.

This order must be served upon the tenant. Should the tenant fail to comply with the order, the 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: August 26, 2016

Residential Tenancy Branch

