



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 landlords' application pursuant to the *Residential Tenancy Act* (the Act) for:

- a monetary order for unpaid rent 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; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The landlords attended the hearing via conference call and provided undisputed affirmed testimony. The tenant did not attend or submit any documentary evidence. The landlord stated that the tenant was served with the notice of hearing package and the submitted documentary evidence via Canada Post Registered Mail on January 14, 2016. The landlord has also submitted as confirmation a copy of the Customer Receipt Tracking Number. I accept the undisputed affirmed evidence of the landlord and find that the tenant was properly served with the notice of hearing package and the submitted documentary evidence via Canada Post Registered Mail on January 14, 2016 as per sections 88 and 89 of the Act. The tenant is deemed properly served 5 days later as per section 90 of the Act.

It was clarified with the landlord that the monetary claim of \$2,450.00 includes unpaid rent, the security deposit and the filing fee. The landlord was notified that the security deposit could only be applied against any established claim and the filing fee would only be awarded if the landlord were successful in the application. As such the landlord's claim was amended to \$2,100.00 for unpaid/loss of rental income.

Issue(s) to be Decided

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

Are the landlords entitled to retain all or part of the security deposit?

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, 2015 on fixed term ending on April 30, 2016. The monthly rent was \$525.00 and a security deposit of \$250.00 was paid on September 25, 2105.

The landlord seeks a monetary claim of \$2,100.00 for unpaid rent for the months January, February, March and April of 2016 at \$525.00 per month. The landlord clarified that the tenant had given notice to vacate the rental unit on December 21, 2015 for January 1, 2016. The landlord stated that upon being notified efforts were made to advertise the rental unit immediately. The landlord provided affirmed testimony that the rental unit was advertised online, in local newspapers and through pamphlets. The landlord stated that all efforts were unsuccessful.

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.

In this case, I accept the undisputed affirmed evidence of the landlord and find that the tenant breached the fixed term tenancy by ending it prematurely on January 1, 2016. I also find that the landlord made reasonable efforts to re-rent the unit using online, local

newspaper services and handing out pamphlets. As such, the landlord is successful in their monetary claim for loss of rental income. The landlord has established a claim for \$2,100.00.

The landlord has applied to retain the \$250.00 security deposit to offset their claim. As such, I grant the landlord's request to retain the \$250.00 security deposit in partial satisfaction of the claim. No interest is payable during this period.

The landlord having been successful is entitled to recovery of the \$100.00 filing fee.

Conclusion

I issue a monetary order in the landlord's favour in the amount of \$1,950.00 under the following terms:

Item	Amount
Loss of Rental Income	\$2,100.00
Offset Security Deposit	-250.00
Recovery of Filing Fee	\$100.00
Total Monetary Order	\$1,950.00

The landlord is provided with this order in the above terms and the tenant(s) must be served with this order as soon as possible. Should the tenant(s) fail to comply with this order, this order may be filed in the Small Claims Division of the Provincial Court and enforced as orders 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: September 08, 2016

Residential Tenancy Branch