



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 and for compensation for loss 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.

The hearing was conducted by conference call. The tenant did not attend this hearing, although I waited until 1:50 p.m. in order to enable the tenant to connect with this teleconference hearing scheduled for 1:30 p.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 April 30, 2016, she personally served both tenants with a copy of the Application for Dispute Resolution and Notice of Hearing.

Based on the above evidence, I am satisfied that the tenants were personally 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 tenants.

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 tenants did not vacate the rental unit until May 3, 2016 and therefore asked to amend her claim to include outstanding rent in the amount of \$1110.00 that was payable on May 1, 2016. Although the tenants did not have prior notice of this claim, I find that the tenants should reasonably have known that

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

Issues

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

Is the landlord entitled to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary award requested?

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

Background and Evidence

The tenancy began on October 1, 2015 with a monthly rent of \$1100.00 payable on the 1st day of each month. The tenants paid a security deposit of \$550.00 at the start of the tenancy. In an earlier application, the landlord was granted an order of possession however the tenants refused to vacate the rental unit until the landlord returned the security deposit. On May 3, 2016 the tenants vacated the rental unit in exchange for return of the security deposit.

The landlord's claim is for outstanding rent in the amount of \$3300.00. The landlord testified that this includes unpaid rent for the months of March, April and May 2016. The landlord testified that she was unable to rent the unit for the month of May 2016 as the tenants did not vacate until May 3, 2016.

Analysis

Section 26 of the Act requires that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

I accept the landlord's uncontested evidence and find that the tenants were obligated to pay monthly rent in the amount of \$1100.00 but failed to pay rent for the months of March and April 2016. I find the tenants are also liable for the loss of rental income for the month of May 2016 as they did not vacate the rental unit May 3, 2016. As a result of the tenants over holding, the landlord lost the opportunity to rent the unit for the month of May 2016. I accept the landlord's claim for outstanding rent and compensation for loss of rent totaling \$3300.00.

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 \$3400.00.

As the landlord has already returned the security deposit and the tenancy had ended, the landlord's application to retain the security deposit is dismissed.

Therefore, I find that the landlord is entitled to a Monetary Order in the amount of \$3400.00.

Conclusion

Pursuant to section 67 of the *Act*, I grant the landlord a Monetary Order in the amount of \$3400.00. Should the tenants 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: September 13, 2016

Residential Tenancy Branch