



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MND, 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 utilities and for damage to the unit 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 tenant did not participate in the conference call hearing, which lasted approximately 15 minutes. The landlord's agent (the "landlord") attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The landlord confirmed he was an agent of the landlord's company named in this application, and had authority to speak on its behalf.

The landlord testified that on May 17, 2016 he forwarded the landlord's application for dispute resolution via registered mail to the forwarding address the tenant provided. The landlord provided a Canada Post receipt and tracking number as proof of service. Based on the testimony of the landlord and in accordance with sections 89 and 90 of the *Act*, I find that the tenant has been deemed served with the application on May 22, 2016, the fifth day after its registered mailing.

Issue(s) to be Decided

Is the landlord entitled to a monetary order for unpaid utilities and for damage to the unit?

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

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

Background and Evidence

As per the submitted tenancy agreement and testimony of the landlord, the tenancy began on July 1, 2010 on a fixed term until June 30, 2011 at which time the tenancy continued on a month-to-month basis. Rent in the amount of \$715.00 was payable on the first of each month. The tenant remitted a security deposit in the amount of \$357.50 at the start of the tenancy. The landlord estimates the tenant vacated the rental unit between April 30, 2016 and May 2, 2016.

The landlord testified that the tenant failed to pay the utility arrears prior to vacating the rental unit. The landlord submitted documentary evidence from the city indicating the outstanding utilities in the amount of \$539.20. The landlord testified that he paid this amount and seeks to recover this amount from the tenant.

The landlord testified that a condition move-in and move-out inspection report was completed with the tenant. During the move-out inspection conducted on May 2, 2016, the landlord and tenant agreed the tenant would be responsible for two light covers and one damaged light fixture. These deficiencies were noted on the submitted move-out inspection report. The landlord testified that although the tenant agreed to the deficiencies the tenant refused to sign the condition inspection report. The tenant provided his forwarding address to the landlord on this same date, May 2, 2016.

The landlord had the light cover and a light fixture repaired at the cost of \$105.00 and seeks to recover this amount from the tenant. The landlord submitted an invoice from the contractor that performed this repair.

Analysis

As per the submitted tenancy agreement utilities are not included with the rent and are the responsibility of the tenant. Section 7(1) of the *Act* establishes that a tenant who does not comply with the *Act*, *Residential Tenancy Regulation* (the "*Regulation*") or tenancy agreement must compensate the landlord for damage or loss that results from that failure to comply.

I find that the landlord proved that the utility arrears were \$539.20. I find the landlord provided undisputed evidence that the tenant failed to pay the utility arrears. Therefore, I find that the landlord is entitled to \$539.20 in utilities.

In respect to a monetary claim for damages or for a monetary loss to be successful an applicant must satisfy the test prescribed by Section 7 of the *Act*. The applicant must prove a loss actually exists and prove the loss happened solely because of the actions of the respondent in violation to the *Act*. The applicant must also verify the loss with receipts and the applicant must show how they mitigated or what reasonable efforts they made to minimize the claimed loss.

Based on the documentary evidence and undisputed testimony of the landlord, I find that the two light covers and one damaged light fixture were a result of the tenants tenancy. Therefore I find that the landlord is entitled to compensation in the amount of \$105.00 as indicated in the submitted receipt.

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 \$357.50 in partial satisfaction of the monetary award and I grant an order for the balance due \$286.70.

As the landlord was successful in this application, I find that the landlord is entitled to recover the \$100.00 filing fee paid for the application, for a total award of \$386.70.

Conclusion

I issue a monetary order in the landlord's favour in the amount of \$386.70.

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 28, 2016

Residential Tenancy Branch