



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNR, MNSD, FF

Introduction

This hearing was convened in response to an application by the landlord, orally amended at the hearing pursuant to the *Residential Tenancy Act* (the Act) for Orders as follows:

1. A Monetary Order for unpaid rent - Section 67;
2. An Order to retain the security deposit - Section 38
3. An Order to recover the filing fee for this application - Section 72.

Both parties appeared. The tenant was represented by their advocate and the landlord was represented by their agent. Both parties provided testimony and were provided the opportunity to present any evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

Is the landlord entitled to the monetary amounts claimed?

Background and Evidence

The undisputed evidence in this matter is as follows. The tenancy began on September 01, 2014. The tenant has since vacated. The tenancy was subject to a written contractual tenancy agreement of which a copy was provided into evidence. Rent in the amount of \$1400.00 was payable in advance on the first day of each month. At the outset of the tenancy, the landlord collected a security deposit from the tenant in the

amount of \$750.00 which they retain in trust. The parties agree the tenant failed to pay the payable rent for the period commencing June 01, 2016 until they vacated in August 2016. The parties also agree the tenant was given a 2 month Notice to End for Landlord's Use dated May 01, 2016, on or soon after June 01, 2016. The tenant disputed the Notice and on August 02, 2016 the Notice was found to be invalid and ineffective to end the tenancy by an Order of an Arbitrator. However, despite the tenant's application to cancel the landlord's Notice they acknowledge not satisfying the payable rent for June 2016, and did not pay the rent thereafter when due. The tenant subsequently vacated, remitting the access keys/fobs to the rental unit on August 19, 2016. The tenant argued they are entitled to reduce rent arrears to the landlord an amount equivalent to the monthly rent payable as compensation for receiving a 2 Month Notice to End.

Analysis

Based on the evidence of both parties, I find that the tenant did not pay the rent when due for June, July or August 2016.

I find that **Section 51** of the Act states as follows;

Tenant's compensation: section 49 notice

51 (1) A tenant who receives a notice to end a tenancy under section 49 [*landlord's use of property*] is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement.

However, despite the tenant receiving the Section 49 Notice (Landlord's 2 Month Notice) the tenant disputed the notice and was successful. An Arbitrator determined it invalid and of no effect to the tenancy: inclusive of any provisions ancillary to the Notice. The Section 49 Notice was ineffective to end the tenancy, but instead the tenancy was Ordered at an end due to non-payment of rent. I find that as a result of all the above the tenant is not entitled to the compensation prescribed by Section 51 of the Act.

I find that the landlord has established a monetary claim for unpaid rent. The landlord is also entitled to recovery of the \$100.00 filing fee.

The security deposit will be off-set from the award made herein.

Calculation for Monetary Order

Unpaid rent for June 2016	1400.00
Unpaid rent for July 2016	1400.00
Unpaid rent for August 2016	1400.00
Filing fee to landlord	100.00
Less Security Deposit held by landlord	-750.00
Total Monetary Award to landlord	3550.00

Conclusion

I Order that the landlord retain the security deposit of \$750.00 in partial satisfaction of the claim and I grant the landlord an Order under Section 67 of the Act for the balance due of **\$3550.00**. If necessary, this Order may be filed in the Small Claims Court and enforced as an Order of that Court.

This Decision is final and binding on both parties.

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 07, 2016

Residential Tenancy Branch