



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Menkis Construction Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNSD, MNDC, MNR, MND, FF

Introduction

This hearing was convened in response to an application by the Tenant and an application by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”).

The Landlord applied on May 24, 2016 for:

1. A Monetary Order for damage to the unit - Section 67;
2. A Monetary Order for unpaid rent and/or utilities - Section 67;
3. A Monetary Order for compensation - Section 67;
4. An Order for the return of the security deposit - Section 38;
5. An Order to recover the filing fee for this application - Section 72.

The Tenant applied on October 5, 2016 for:

1. A Monetary Order for compensation - Section 67; and
2. An Order for the return of the security deposit - Section 72.

Both Parties appeared and were each given full opportunity under oath to be heard, to present evidence and to make submissions. During the hearing the Parties reached a mutual agreement to settle all claims in both applications.

Preliminary Matter

It was noted at the onset of the hearing that an evidence package from the Landlord was only received by the Residential Tenancy Branch (the “RTB”) a few hours prior to the hearing. The Tenant confirmed that it had also just received an evidence package from the Landlord the morning of this hearing. The Landlord states that the owner had been in the hospital between September 2016 and the first week of November 2016. The Landlord states that they were waiting for instructions from the owner before proceeding with the provision of evidence. The Landlord states that prior to this hospitalization the Landlord was unable to provide its evidence

as the situation changed due to a trespass by the Tenant and some interaction with the police by the Landlord. The Landlord asks for an adjournment so that the evidence package may be considered.

The Tenant denies any trespass and states that the Landlord's evidence is indicative of the Landlord's approach during the tenancy and that the Landlord flouts rules. The Tenant states that the evidence of waiting on instructions from the owner is not valid as the Tenant was previously informed by the owner that all tenancy dealings were to be handled only by the owner's agents and that the owner would not be involved. The Tenant states that any delay would be highly prejudicial to the Tenant who has dealt with its own claim and evidence as required.

Rule 3.11 of the RTB Rules of Procedure provides that evidence must be served and submitted as soon as reasonably possible and that where a party has unreasonably delayed the service of the evidence such evidence may not be considered. The application clearly indicates that the costs being claimed were either incurred or known at the time the application was made. Given the length of time that the Landlord had prior to the owner being in the hospital and considering the Landlord's vague evidence on why the evidence had not been served on the Tenant during this time or at the time of the application, I find that the Landlord has unreasonably delayed the service of the evidence and I refuse to either adjourn the hearing or to consider the Landlord's documentary evidence.

Agreed Facts

The tenancy started in either November or December 2014 and ended on May 10, 2016. Rent of \$2,400.00, plus \$50.00 for parking, was payable in advance on the first day of each month. At the outset of the tenancy, the Landlord collected \$1,200.00 as a security deposit and \$1,200.00 as a pet deposit. The Parties mutually conducted a move-in inspection with a completed report. The Tenant failed to attend either of the Landlord's two offers to attend the move-out inspection. On April 11, 2016 the Tenant gave its notice to end tenancy. In May 2016 the Tenant received a notice to end tenancy for unpaid rent with an effective date of May 10, 2016.

Each Party provided full evidence to support each of their own claims and in response to the other's application, the details of which are not set out herein given the mutual agreement to resolve the disputed claims.

Settlement Agreement

The Parties mutually agree as follows:

- 1. The Landlord will pay the Tenant \$1,200.00 forthwith; and**
- 2. These terms comprise the full and final settlement of all aspects of the claims and disputed for each Party.**

Section 63 of the Act provides that if the parties settle their dispute during dispute resolution proceedings, the settlement may be recorded in the form of a decision or order. Given the agreement reached between the Parties at the hearing and to give effect to this agreement, I grant the Tenant a monetary order for \$1,200.00.

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Conclusion

The Parties have settled the dispute.

I grant the Tenant an order under Section 67 of the Act for **\$1,200.00**. If necessary, this order may be filed in the Small Claims 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: November 18, 2016

Residential Tenancy Branch