



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MND, 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, for damage to the rental unit, and for money owed or compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("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;
- 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 10 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 she 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 13, 2016 she forwarded the landlord's application for dispute resolution hearing package via registered mail to the tenant. 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 18, 2016, the fifth day after its registered mailing.

Issue(s) to be Decided

Is the landlord entitled to a monetary order for unpaid rent, for damage to the rental unit, and for money owed or compensation for damage or loss under the *Act*, *Regulation* or tenancy agreement?

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, 2015 on a fixed term until June 30, 2016. Rent in the amount of \$725.00 was payable on the first of each month. The tenant remitted a security deposit in the amount of \$362.50 at the start of the tenancy.

The tenant provided written notice to the landlord on March 14, 2016 of his intention to vacate the rental unit by April 30, 2016. The tenant vacated the rental unit on April 30, 2016.

Upon receipt of the tenant's notification to terminate the lease, the landlord advertised the rental unit and secured a new tenancy effective July 1, 2016.

The landlord seeks a total of \$1,240.00 in damages. Specifically the landlord seeks to recover May rent in the amount of \$725.00, cleaning costs in the amount of \$40.00, painting in the amount of \$75.00, floor waxing and buffing in the amount of \$100.00 and liquated damages in the amount of \$300.00.

The landlord also seeks to recover the \$100.00 filing fee for this application from the tenant.

Analysis

Section 45 of *Act* establishes that a tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that is not earlier than the date specified in the tenancy agreement as the end of the tenancy.

Based on the testimony of the landlord and the submitted tenancy agreement, the parties had a fixed term tenancy that was scheduled to end on June 30, 2016. Although the tenant provided written notice of his intent to end the tenancy on April 30, 2016, he attempted to end the tenancy earlier than the date specified in the fixed term tenancy agreement, which is not in compliance with section 45 of the *Act*.

Pursuant to the *Residential Tenancy Policy Guideline, 30: Fixed Term Tenancies* ("Guideline 30"), neither a landlord nor a tenant can end a fixed term tenancy unless for cause or by written agreement of both parties. In the absence of a mutual agreement to end tenancy I find the tenant did not end this tenancy in accordance with the *Act*.

May Rent

As per *Residential Tenancy Policy Guideline, 5: Duty to Minimize Loss* ("Guideline 5"), when a tenant ends the tenancy agreement contrary to the provisions of the *Act*, the landlord claiming loss of rental income must make reasonable efforts to re-rent the rental unit.

Based on the landlord's undisputed evidence and testimony I find the landlord mitigated her loss by advertising the unit promptly and securing a tenancy for July 1, 2016. Therefore I find that the landlord is entitled to \$725.00 for May rent.

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.

Cleaning

Section 37 of the *Act* establishes that a tenant must leave the rental unit reasonably clean upon vacancy of the rental unit. Based on the undisputed testimony of the landlord and submitted cleaning invoice, I find the tenant did not leave the unit reasonably clean and therefore find the landlord has established a claim in the amount of \$40.00 for cleaning.

Paint & Floor Wax

In regards to the landlord's claim for painting and floor waxing, I find the landlord has failed to substantiate this loss with submitted receipts. For this reason I dismiss this portion of the landlord's claim.

Liquidated Damages

Within the submitted tenancy agreement addendum, a clause indicates the parties agree the tenant will pay \$300.00 in liquidated damages in the event the tenant ends the tenancy before the end of the original term. I find the liquidated damages clause is valid and therefore find the landlord is entitled to recover \$300.00 in liquidated damages from the tenant.

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 \$362.50 in partial satisfaction of the monetary award and I grant an order for the balance due \$702.50. 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 \$802.50.

Conclusion

I issue a monetary order in the landlord's favour in the amount of **\$802.50**.

The landlord's claim for painting and floor waxing is dismissed with leave to reapply.

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 09, 2016

Residential Tenancy Branch