



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute codes MNR 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 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. All named parties attended the hearing and were given a full opportunity to be heard, to present evidence and to make submissions.

Tenant D.L.B. confirmed service of the application for dispute resolution, including the notice of hearing and evidence on file although she stated it was sent to a former address provided at the beginning of the tenancy. In accordance with section 71(2)(c) of the Act, I find tenant D.B. was sufficiently served with the Application for Dispute Resolution.

The landlord testified that tenant N.R.O. was served by registered mail to a forwarding address he provided. The landlord provided a registered mail receipt and tracking number as proof of service. I am satisfied that tenant N.R.O. was also deemed served with the Application for Dispute Resolution and Notice of Dispute Resolution Hearing pursuant to sections 89 & 90 of the Act. The hearing proceeded in the absence of the tenant N.R.O.

Preliminary Issue – Request for Adjournment

Tenant D.L.B. requested an adjournment of the hearing until such time that tenant N.R.O. could attend. She submits that she moved out of the rental unit shortly after the tenancy began and tenant N.R.O. should be responsible for the claim. The adjournment

request was denied as I was satisfied that both parties had been served with the Notice of Hearing. Additionally, co-tenants are jointly and severally liable so it is not a requirement that both tenants be present for the hearing.

Issues

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

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 tenant?

Background and Evidence

The tenancy began on December 1, 2015 with a monthly rent of \$1380.00 payable on the 1st day of each month. The tenancy was a joint tenancy between the two co-tenants and was for a fixed term ending on January 31, 2017. The tenants paid a security deposit of \$690.00 at the start of the tenancy and a \$150.00 deposit for two key fobs which the landlord continues to hold. The tenancy ended on April 30, 2016 and the landlord confirmed the two key fobs were returned by the tenant.

The landlord testified that the tenant breached the fixed term lease agreement by vacating the rental unit on April 30, 2016 without any Notice or mutual agreement to end the fixed term tenancy. The landlord's monetary claim is for outstanding rent in the amount of \$2760.00. The landlord testified that this includes unpaid rent for the month of April 2016 and loss of rental income for the month of May 2016. The landlord testified that she was not able to re-rent the rental unit for the month of May 2016 on such short Notice but was able to mitigate losses by renting the unit beginning June 1, 2016.

The tenant did not dispute the landlord's claim and reiterated that tenant N.R.O. should be responsible.

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 find that the tenants were obligated to pay monthly rent in the amount of \$1380.00 but failed to pay rent for the month of April 2016. I also accept the landlord's claim for loss

of rent for the month of May 2016 as the tenants ended the fixed term tenancy earlier than the date specified in the agreement.

I accept the landlord's claim for outstanding rent and loss in the amount of \$2760.00.

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 \$2860.00.

The landlord continues to hold a security deposit in the amount of \$690.00. I allow the landlord to retain the security deposit in partial satisfaction of the monetary award pursuant to section 38 of the Act. As the landlord confirmed the key fobs have been returned, the key fob deposit of \$150.00 retained by the landlord is also deducted from the monetary award.

Therefore, I find that the landlord is entitled to a Monetary Order in the amount of \$1970.00.

As this tenancy was a co-tenancy, both tenants are jointly and severally liable for this amount.

Conclusion

Pursuant to section 67 of the *Act*, I grant the landlord a Monetary Order in the amount of \$1970.00. 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: November 08, 2016

Residential Tenancy Branch