



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND MNR MNDC MNSD FF

Introduction

This hearing was convened in response to the landlord's application pursuant to the *Residential Tenancy Act* (the "Act") for Orders as follows:

- a monetary order for compensation for unpaid rent, loss and damage pursuant to section 67;
- authorization to retain of all or a portion of the security deposit 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. The tenants did not attend this hearing. The landlord attended the hearing and was given a full opportunity to be heard, to present evidence and to make submissions.

The landlord testified that on April 30, 2016, copies of the Application for Dispute Resolution and Notice of Hearing were sent to both tenants by registered mail to the forwarding address provided by the tenants. The landlord provided the registered mail receipts and tracking numbers in support of service.

Based on the above evidence, I am satisfied that the tenants were served with the landlord's 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 tenants.

Issues

Is the landlord entitled to a monetary award for compensation for unpaid rent, loss and damage to the rental unit?

Is the landlord entitled to retain all or a portion of the security deposit pursuant to section 38?

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

Background

The rental unit is a single family residential house. The one-year fixed term tenancy began on July 1, 2015 with a monthly rent of \$2800.00 payable on the 1st day of each month. The tenants paid a security deposit of \$1400.00 at the start of the tenancy which the landlord continues to retain. The tenancy ended on April 15, 2016 before the end of the fixed term.

Evidence & Analysis

Based on the uncontested testimony and the documentary evidence provided by the landlord, my findings in relation to the various aspects of the landlords' application as set out on the Monetary Order Worksheet are as follows:

#1: April rent

#2: late rent charge

#3: rental loss for May and June

The landlord is claiming unpaid rent for the month of April 2016 and a \$25.00 late rent fee for this month. The landlord testified that the tenants did not pay rent for this month and vacated the rental unit in breach of the fixed term agreement. As a result, the landlord is also claiming loss of rental income for the months of May and June 2016. The landlord testified that they were not able to re-rent the rental unit during this period. The landlord testified that they had found one prospective tenant but he backed out due to some alleged concerns the city had with an illegal operation in the rental unit.

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 accept the landlord's testimony and find the tenant was obligated to pay rent in the amount of \$2800.00 but failed to pay rent for the month of April 2016. I also accept the landlord's testimony that the tenancy agreement provided for the landlord to charge a \$25.00 fee for the late payment of rent. The landlord is awarded **\$2825.00**.

I dismiss the landlords claim for unpaid rent beyond the month of April 2016 as the tenants vacated the rental unit on April 15, 2016. Even though the tenants breached

the agreement by vacating the rental unit prior to the end of the fixed term, the landlord is still required to mitigate losses by re-renting or attempting to re-rent the unit. The landlord did not provide sufficient evidence that they attempted to re-rent the rental unit. The landlord testified that a prospective tenant backed out but did not provide any evidence to support it was as a result of the actions or neglect of the tenant. The landlord did not provide any evidence of additional attempts made to re-rent the rental unit.

#4: carpet cleaning

The landlord submitted a receipt for a carpet cleaning service. The landlord testified the carpets were not professionally cleaned at the end of the tenancy.

Section 7 of the Act provides for an award for compensation for damage or loss as a result of a landlord or tenant not complying with this Act, the regulations or their tenancy agreement.

Section 37 of the Act requires that when a tenant vacates a rental unit, the tenant must leave the rental unit reasonable clean and undamaged except for reasonable wear and tear.

I accept the landlord's testimony and invoice submission in support of the landlord's claim that the tenant did not leave the carpet reasonably clean at the end of the tenancy. I find the landlord is entitled to an award of **\$115.50** as per the invoice submitted.

#5 to #8: various cleaning and repair of damage

The landlord did not present any evidence to support this loss or damage existed; that the alleged damage was caused by the tenants; or any proof of the actual amounts required to repair the alleged damage. This portion of the landlord's claim is dismissed.

filing fee and security deposit:

As the landlord was for the most part 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 **\$3,040.50**.

The landlord continues to hold a security deposit of \$1,400.00. I allow the landlord to retain the security deposit in partial satisfaction of the monetary award pursuant to section 38 of the Act.

Therefore, I find that the landlord is entitled to a Monetary Order in the amount of **\$1640.50.**

Conclusion

Pursuant to section 67 of the *Act*, I grant the landlord a Monetary Order in the amount of **\$1,640.50.** Should the tenant 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 01, 2016

Residential Tenancy Branch