



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNR, MNSD, MNDC, FF

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution (the “Application”) made by the Landlord for a Monetary Order for: damage to the rental unit; for unpaid rent; for money owed or compensation for damage or loss under the *Residential Tenancy Act* (the “Act”), regulation or tenancy agreement; to keep the Tenants’ security deposit; and, to recover the filing fee from the Tenants.

The Landlord appeared for the hearing and provided affirmed testimony as well as documentary and photographic evidence prior to the hearing. There was no appearance for the Tenants during the 17 minute hearing or any submission of written evidence prior to the hearing. Therefore, I turned my mind to the service of documents by the Landlord.

The Landlord testified that he served both Tenants with a copy of the Application and the Notice of Hearing documents by registered mail on May 19, 2016 to the address the male Tenant had provided after the tenancy had ended. The Landlord provided the Canada Post tracking number into oral evidence which is documented on the front page of this Decision. The Canada Post website shows that both Tenants signed and received the documents on June 7, 2016.

Based on the undisputed evidence of the Landlord, I find the Tenants were served with the required documents pursuant to Section 89(1) (c) of the Act. The hearing continued to hear the undisputed evidence of the Landlord which I have summarized as follows.

Issue(s) to be Decided

- Is the Landlord entitled to unpaid rent and a late rent fee?
- Is the Landlord entitled to damages to the fridge and freezer?
- Is the Landlord entitled to keep the Tenants’ security deposit?

Background and Evidence

The Landlord testified that this tenancy started on October 10, 2015 for a fixed term of one year due to expire on October 14, 2016. A written tenancy agreement was completed which required the Tenants to pay rent in the amount of \$1,600.00 on the 15th day of each month. The Tenants paid the Landlord a security deposit of \$800.00 at the start of the tenancy which the Landlord still retains.

The Landlord completed a move-in Condition Inspection Report (the "CIR") on October 10, 2015 and provided this into evidence. The Landlord testified that on February 15, 2016 the Tenants failed to pay rent in the amount of \$1,600.00. The Landlord testified that he served the Tenants with a notice to end tenancy for unpaid rent at some point after February 15, 2016, shortly after which he discovered that the female Tenant had vacated the rental unit without any written notice. The Landlord testified that the male Tenant did pay \$100.00 towards the rental arrears.

The Landlord testified that he kept communication with the male Tenant by text message because the female Tenant informed him that she was not going to pay rent. The Landlord testified that the male Tenant did not provide any formal written notice on when the male Tenant was going to be vacating the rental unit. However, he received a text message from the Tenant on March 19, 2016 informing him that he had vacated the rental unit and that the place was locked up with his key inside. The Landlord testified that he sent the male Tenant a text message asking to do a move-out CIR with him on March 20, 2016 between 3 p.m. and 5 p.m. or on March 21, 2016 after 5 p.m.

The Landlord testified that the Tenant responded stating that no move-out CIR was required and that they would be working with the Landlord to settle the rental arrears. The text message evidence was provided for this hearing. The Landlord testified that he did not get the second key from the female Tenant provided to her at the start of the tenancy and that the Tenants had not paid the outstanding rental arrears of \$1,500.00.

The Landlord testified that the Tenants also caused damage to the freezer and fridge door and pointed to photographic evidence to demonstrate this damage. The Landlord provided cost estimates for the replacement costs of the doors for a total amount of \$1,437.08.

The Landlord provided an invoice in the amount of \$100.00 to replace the front door lock as the female Tenant did not return the keys to the rental unit. In addition, the Landlord claims a \$25.00 late rent fee payment the Tenants were responsible for

pursuant to section 11 of the tenancy agreement which provides for this fee. The total claim made by the Landlord is \$3,062.08.

Analysis

Section 26(1) of the Act states that a tenant is required to pay rent when it is due under the tenancy agreement. I accept the undisputed evidence of the Landlord that the Tenants failed to pay \$1,500.00 in rent for the month of February 2016. Therefore, this amount is awarded to the Landlord.

Section 7(d) of the *Residential Tenancy Regulation* allows a landlord to charge a fee of no more than \$25.00 for late payment of rent which is documented in a tenancy agreement. Therefore, in accordance with section 11 of the signed tenancy agreement between the parties, I find that there is sufficient evidence to prove that the Landlord is entitled to the late rent fee of \$25.00 due to the failure of the Tenants to pay February 2016 rent.

Section 37(2) of the Act requires a tenant to leave a rental unit reasonably clean and undamaged at the end of a tenancy. In addition, Section 21 of the *Residential Tenancy Regulation* allows a CIR to be considered as evidence of the state of repair and condition of the rental unit, unless a party has a preponderance of evidence to the contrary. Based on the foregoing, I accept the Landlord's undisputed evidence that the Tenants caused the damage shown in the photographs to the fridge and freezer door. Therefore, I award the Landlord the replacement costs claimed in the amount of \$1,437.08 as evidenced by the estimates provided into evidence.

Section 37(2) (b) of the Act states that at the end of a tenancy a tenant is required to return the keys to the landlord. In this case, I accept the undisputed evidence of the Landlord that the female Tenant failed to comply with the Act in returning all of the keys for the rental unit. I accept that the Landlord had to replace the locks for a cost of \$100.00 which I award to the Landlord based on the invoice provided.

Therefore, the total amount the Landlord is entitled to is \$3,062.00. As the Landlord has been successful in this matter, the Landlord is also entitled to the \$100.00 filing fee for the cost of this Application, pursuant to Section 72(1) of the Act. Therefore, the total amount awarded to the Landlord is \$3,162.00.

Section 36(1) of the Act states that the right of a tenant to the return of a security deposit is extinguished if the landlord has provided two opportunities for the tenant to take part in the condition inspection at the end of the tenancy. I have examined the text

message communication provided by the Landlord for this hearing which the Landlord referred to in his testimony. As a result, I find that the male Tenant was provided with two different dates and times to complete the move-out CIR with the Landlord. However, I find the Tenant made it very clear that he had no intention of appearing for the move-out condition inspection and did not ask for an alternative date and time. Therefore, I am only able to conclude from the evidence before me that the Tenants extinguished their right to the return of their security deposit.

Accordingly, as the Landlord already holds \$800.00 in the Tenants' security deposit, I order the Landlord to retain this amount in partial satisfaction of the claim awarded, pursuant to Section 72(2) (b) of the Act. As a result, the Landlord is awarded the outstanding balance of \$2,362.08.

Conclusion

The Tenants have breached the Act by not paying rent and causing damage to the rental unit. Therefore, the Landlord may keep the Tenants' security deposit and I grant the Landlord a Monetary Order for the remaining balance of \$2,362.08.

Copies of this order are attached to the Landlord's copy of this decision. This order must be served on the Tenants and may then be filed in the Small Claims Division of the Provincial Court and enforced as an order of that court. The Tenants may also be liable for the enforcement costs of the order.

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 14, 2016

Residential Tenancy Branch