



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR MNSD MNDC FF

Introduction

This hearing dealt with the landlord's application for monetary compensation. The landlord, counsel for the landlord and the tenant participated in the teleconference hearing.

Preliminary Issues

Previous Hearing

On September 23, 2016 the parties participated in a dispute resolution hearing that dealt with the tenant's application to cancel a notice to end tenancy for unpaid rent, as well as for monetary compensation. In the resulting decision, dated September 23, 2016, the arbitrator determined that it would be appropriate to sever the tenant's monetary claim, which was dismissed with leave to reapply.

During that hearing, as recorded in the decision, the tenant acknowledged withholding rent. The arbitrator considered the evidence and determined that the notice to end tenancy for unpaid rent was valid. Accordingly, the arbitrator dismissed the tenant's application and granted the landlord an order of possession.

Evidence

The landlord served on the tenant a binder of evidence which contained evidence relevant to both the hearing on the tenant's application and the hearing on the landlord's application. The tenant stated that he had received the landlord's evidence on August 14, 2106.

The tenant did not submit evidence in response to the landlord's application. I heard submissions from the landlord's counsel and testimony from the tenant in response to the landlord's claim.

Adjournment Request

At the outset of the hearing on the landlord's application, the tenant requested an adjournment. The tenant stated that he needed more time to prepare a response to the landlord's application. The landlord opposed the adjournment and stated that in the hearing on September 23, 2016 the tenant indicated that he was prepared for today's hearing on the landlord's claim and acknowledged that he withheld rent. The landlord also stated that he is continuing to lose money on the rental property. I declined the tenant's request for an adjournment, as he received the landlord's evidence for both hearings on August 14, 2016 and he therefore had more than sufficient time to prepare his response to the landlord's application.

Issue(s) to be Decided

Is the landlord entitled to monetary compensation as claimed?

Background and Evidence

The tenancy began on December 15, 2014, with monthly rent of \$2,000.00. The rental property is in a fairly rural area, and includes a house and shop. The tenancy agreement indicates that the security deposit was \$2,000.00. The landlord stated in the hearing that he could not find any further records to show that the tenant had in fact paid the security deposit.

The landlord stated that in 2015 he agreed to reduce the rent to \$1,200.00 for a few months. The landlord stated that the rent reduction was only to be for November and December 2015 and January 2016 . The landlord stated that the tenant withheld part or all of the rent for several months during the tenancy.

The landlord stated that the tenant owes rent as follows:

- | | |
|------------------|------------|
| a) March 2015 | \$2,000.00 |
| b) June 2015 | \$2,000.00 |
| c) October 2015 | \$2,000.00 |
| d) February 2016 | \$800.00 |
| e) March 2016 | \$2,000.00 |

- | | |
|-------------------|----------|
| f) April 2016 | \$800.00 |
| g) May 2016 | \$800.00 |
| h) June 2016 | \$800.00 |
| i) August 2016 | \$800.00 |
| j) September 2016 | \$800.00 |

The landlord's bank records mostly correlate with the above monetary claim, except where they show a payment of \$2,000.00 in November 2015, followed by payments of \$1,200.00 in December 2015, January 2016 and February 2016. The total amount of the claim does not change, regardless of whether the landlord allowed the three-month reduction in rent from November 2015 through January 2016 or from December 2015 through February 2016. The landlord's total monetary claim is \$12,800.00.

The tenant's response was that the landlord had agreed to let the tenant make deductions for labour and supplies that the tenant provided to do repairs on the rental property. The tenant believed that he paid rent for March 2015; he stated that the landlord allowed him to withhold rent for either June 2015 or October 2015; and he could not recall whether he made any payment for March 2016. The tenant acknowledged that he withheld the other amounts as the landlord has indicated.

Analysis

I find that the landlord's evidence is fairly straightforward regarding the amounts of rent that were or were not paid. The tenant claimed to either have permission to deduct from the monthly rent or he made payments that the landlord has claimed as not paid; however, the tenant did not provide any banking or other evidence to show that he had permission to withhold rent or that he made the payments the landlord denied receiving. The tenant could not recall whether he had made some of the payments or not.

I find that the landlord has provided sufficient evidence to support his claim, and the tenant has failed to refute the claim. I therefore grant the landlord \$12,800.00.

As the application was successful, the landlord is also entitled to recovery of the \$100.00 filing fee.

Neither party provided sufficient evidence regarding whether or not a security deposit was paid.

Conclusion

The landlord's monetary claim is successful.

I grant the landlord an order under section 67 for the balance due of \$12,900.00. This order may be filed in the Small Claims Court and enforced as an order of that Court.

As set out under section 72 of the Act, if the tenant did pay a security deposit, the landlord may withhold the deposit in partial compensation of the monetary award.

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 3, 2016

Residential Tenancy Branch