



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPM, MNR, MND, MNDC, MNSD, FF

Introduction

This hearing dealt with the landlord's Application for Dispute Resolution seeking an order of possession and a monetary order.

The hearing was conducted via teleconference and was attended by the landlord.

The landlord testified the tenant was served with the notice of hearing documents and this Application for Dispute Resolution, pursuant to Section 59(3) of the *Residential Tenancy Act (Act)* personally on May 26, 2016 in accordance with Section 89 and that this service was witnessed by a third party.

Based on the testimony of the landlord, I find that the tenant has been sufficiently served with the documents pursuant to the *Act*.

At the outset of the hearing the landlord confirmed the tenant vacated the rental unit on May 29, 2016. As such, the landlord no longer required an order of possession and I have amended the landlord's Application for Dispute Resolution to exclude the issue of possession.

Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to a monetary order for overholding and lost revenue; for all or part of the security or pet damage deposit and to recover the filing fee from the tenant for the cost of the Application for Dispute Resolution, pursuant to Sections 38, 65, 67, and 72 of the *Act*.

Background and Evidence

The landlord submitted into evidence the following documentary evidence:

- A copy of a tenancy agreement signed by the parties on March 1, 2016 for a month to month tenancy beginning on March 1, 2016 for the monthly rent of \$650.00 due on the 1st of each month with a security deposit of \$325 and a pet damage deposit of \$200.00 requested; and
- A Mutual Agreement to End a Tenancy signed by the parties on March 31, 2016 with the tenant agreeing to vacate the rental unit by 5:00 p.m. on April 30, 2016.

The landlord testified the tenant never did pay the security deposit and that she only paid \$75.00 of the pet damage deposit. The landlord confirmed she still holds the \$75.00 pet damage deposit.

The landlord testified that the tenant caused disturbances to the upstairs occupant of such significance that the upstairs occupant ended her tenancy with the landlord earlier than she had planned. That is originally she was going to vacate the property by the end of April 2016 but left by mid-April and only paid the landlord ½ month's rent for that period.

The landlord testified that it was as a result of these disturbances that she and the tenant signed the Mutual Agreement to End Tenancy noted above. The landlord stated that the tenant did not move out at the end of April 2016. Rather the landlord confirmed that she had agreed to allow the tenant to stay until May 15, 2016 and the tenant paid her \$325.00 or ½ month's rent to do so.

However, the landlord submitted, that the tenant did not move out of the rental unit until May 29, 2016. The landlord seeks compensation for the tenant's overholding of the rental unit in the amount of \$325.00.

The landlord also seeks the lost revenue from the rental unit above where the occupant of that unit moved out of the residential property due to the disturbances caused by the tenant in the amount of ½ month's rent for that unit or \$600.00.

The landlord also submitted that as a result of the tenant overholding of the rental unit she had to provide the upper unit to the new tenant who was going to move into the subject unit. As result, the landlord stated she lost \$600.00 in rental income because the upper unit rents for \$1,200.00 but the new tenant only paid the rent of \$600.00 for the lower unit.

Analysis

To be successful in a claim for compensation for damage or loss the applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
3. The value of the damage or loss; **and**
4. Steps taken, if any, to mitigate the damage or loss.

Section 57 of the *Act* defines "overholding tenant" means a tenant who continues to occupy a rental unit after the tenant's tenancy is ended. The section goes on to allow a landlord to claim compensation from an overholding tenant for any period that the overholding tenant occupies the rental unit after the tenancy is ended.

In the absence of any evidence to dispute the landlord's claim for overholding I find the landlord has established the tenant has overheld the rental unit for the entire month of May 2016. As a result, I find the landlord has established a loss of \$325.00 of revenue.

Furthermore, I find the landlord has established, based primarily on her undisputed evidence and testimony, that the tenant did cause the upper tenant to end her tenancy early and as a result the landlord suffered a loss of \$600.00.

And finally, I also find the landlord has established that she has suffered a loss of rental income by having to allow her new tenant to live in the upper, more expensive, rental unit during the overholding by this tenant. I am satisfied the landlord has established the value of this loss to be \$600.00.

Conclusion

Based on the above, I find the landlord is entitled to monetary compensation pursuant to Section 67 in the amount of **\$1,625.00** comprised of \$325.00 overholding; \$1,200.00 for lost revenue and the \$100.00 fee paid by the landlord for this application.

I order the landlord may deduct the pet damage deposit and interest held in the amount of \$75.00 in partial satisfaction of this claim. I grant a monetary order in the amount of **\$1,550.00**. This order must be served on the tenant. If the tenant fails to comply with this order the landlord may file the order in the Provincial Court (Small Claims) and be 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: December 16, 2016

Residential Tenancy Branch