



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR MNSD MNDC FF

Introduction

This hearing was convened as a result of the landlord's Application for Dispute Resolution (the "Application") under the *Residential Tenancy Act* (the "Act") for a monetary order for unpaid rent or utilities, for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, for authorization to retain all or part of the tenant's security deposit, and to recover the cost of the filing fee.

The landlord attended the teleconference hearing and gave affirmed testimony. During the hearing the landlord was given the opportunity to provide the landlord's evidence orally. A summary of the evidence is provided below and includes only that which is relevant to the hearing.

As the tenant did not attend the hearing, service of the Notice of a Dispute Resolution Hearing (the "Notice of Hearing"), Application for Dispute Resolution (the "Application") and documentary evidence were considered. The landlord testified that the Notice of Hearing, Application and documentary evidence were served on the tenant by registered mail on June 9, 2016. The landlord submitted a registered mail tracking number through his testimony, which has been included on the cover page of this decision for ease of reference. The online registered mail tracking website information indicates that registered mail package, which the landlord testified was addressed to the tenant, was signed for and accepted on June 13, 2016. Based on the above, and without any evidence to prove to the contrary, I accept that the tenant was served on June 13, 2016, the date the registered mail package containing the Notice of Hearing, Application and documentary evidence was signed for and accepted.

Issues to be Decided

- Is the landlord entitled to a monetary order under the Act, and if so, in what amount?

- What should happen to the tenant's security deposit under the *Act*?

Background and Evidence

A copy of the tenancy agreement was submitted in evidence. The first fixed-term tenancy agreement started on November 1, 2014 and ended on October 31, 2015 when a new fixed-term tenancy began as of November 1, 2015 and was scheduled to end on October 31, 2016. According to the tenancy agreement, monthly rent in the amount of \$1,950.00 was due on the first day of each month. The tenant paid a security deposit of \$975.00 at the start of the tenancy, which the landlord continues to hold.

The landlord's monetary claim for \$3,436.00 is as follows:

ITEM DESCRIPTION	AMOUNT CLAIMED
1. Loss of May 2016 rent	\$1,950.00
2. Rekeying cost	\$111.00
3. Replacement cost of key fob	\$120.00
4. Suite cleaning	\$280.00
5. Lease break fee/liquidated damages	\$975.00
TOTAL	\$3,436.00

Regarding item 1 the landlord has claimed \$1,950.00 for the loss of May 2016 rent due to the tenant breaching his fixed term tenancy agreement. According to the landlord, the tenant phoned the landlord on April 2, 2016 to advise the landlord that he was moving to Toronto and was moving out as of May 1, 2016. The landlord estimates that the tenant vacated the rental unit on or about April 15, 2016 and failed to return the keys or entrance fob to the landlord. The landlord affirmed that the tenant failed to provide written notice that he was vacating the rental unit. The landlord stated that he suffered a loss of May 2016 rent due to the tenant breaching the fixed term tenancy. The landlord testified that while he sold the rental unit as of June 1, 2016 as it sold quickly, the landlord could have had an earlier completion date if the tenant had not left the rental unit in such a dirty condition at the end of the tenancy.

Regarding item 2, the landlord testified that due to the tenant failing to provide the keys to the rental unit back, the landlord had to re-key the rental unit at a cost of \$111.00. The landlord submitted an invoice from a locksmith in support of this portion of his claim.

Regarding item 3, the landlord testified that the strata corporation charged \$120.00 for a new key fob to replace the one the tenant failed to return at the end of the tenancy. The landlord submitted the condition inspection report which supports that one “entrance fob” was provided to the tenant at the start of the tenancy. A receipt for the amount of \$120.00 for a fob was submitted in evidence in support of the amount claimed for this portion of the landlord’s claim.

Regarding item 4, the landlord has claimed a total of \$280.00 for suite cleaning and referred to an invoice submitted in the same amount in support of this portion of the landlord’s claim. The landlord testified that the tenant left the rental unit in a dirty condition when he vacated the rental unit.

Regarding item 5, the landlord has claimed \$975.00 for liquidated damages which was dismissed during the hearing as the landlord failed to have that term as a condition of the tenancy agreement and which is required to be agreed to by both parties at the start of the tenancy in accordance with Residential Tenancy Branch Policy Guideline #4 which reads in part:

“A liquidated damages clause is a clause in a tenancy agreement **where the parties agree in advance** the damages payable in the event of a breach of the tenancy agreement.”

[reproduced as written with my emphasis added]

Analysis

Based on the undisputed documentary evidence and undisputed testimony of the landlord provided during the hearing, and on the balance of probabilities, I find the following.

As the tenant was served with the Notice of Hearing, Application and documentary evidence and did not attend the hearing, I consider this matter to be unopposed by the tenant. As a result, I find the landlord’s application is successful with the exception of item 5 which is dismissed due to the landlord failing to have a liquidated damages clause as part of the tenancy agreement as indicated above. I find the remainder of the landlord’s claim to be reasonable and that the evidence supports the claims as submitted. I also find the tenant breached section 45 of the *Act* which states in part:

Section 45 of the *Act* states:

45 (2) A tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that

(a) **is not earlier than one month after the date the landlord receives the notice,**

(b) **is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and**

(c) **is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.**

(4) A notice to end a tenancy given under this section **must comply with section 52** *[form and content of notice to end tenancy]*.

[my emphasis added]

Based on the above, I find the tenant breached section 45(2) and 45(4) of the *Act* as the tenant failed to give proper notice in writing to the landlord and that the tenant could not end the tenancy earlier than October 31, 2016, which is the date the fixed term tenancy was scheduled to end.

Given the above, I find the landlord has proven his monetary claim for items 1-4 inclusive in the amount of **\$2,461.00**. As the landlord's claim had merit, I grant the landlord the recovery of the cost of the filing fee in the amount of **\$100.00**. Therefore, the landlord has established a total monetary claim in the amount of **\$2,561.00**.

The landlord continues to hold the tenant's security deposit of \$975.00 which has not accrued any interest to date.

I authorize the landlord to retain the tenant's full security deposit of \$975.00 in partial satisfaction of the landlord's monetary claim. I grant the landlord a monetary order pursuant to section 67 of the *Act*, for the balance owing by the tenant to the landlord in the amount of **\$1,586.00**.

Conclusion

The landlord's claim has merit.

The landlord has been authorized to retain the tenant's full security deposit of \$975.00 in partial satisfaction of the landlord's total \$2,561.00 monetary claim. The landlord has been granted a monetary order pursuant to section 67 of the *Act*, for the balance owing

by the tenant to the landlord in the amount of \$1,586.00. The landlord must serve the tenant with the monetary order and may enforce the monetary order in the Provincial Court (Small Claims Division).

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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 12, 2016

Residential Tenancy Branch