



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR MNDC 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 recover the filing fee for this application from the tenant pursuant to section 72.

The hearing was conducted by conference call. All named parties attended this hearing and were given a full opportunity to be heard, to present evidence and to make submissions.

The tenants acknowledged service of the landlord's original and amended application as well as service of a subsequent 4 page evidence package on December 7, 2016.

Preliminary and Procedural Matters – Late Evidence

Rule 3.15 of the Residential Tenancy Branch (the Branch) Rules of Procedure requires copies of all of the respondent's evidence to be received by the applicant and the Branch not less than 7 days before the hearing. The tenants' evidence package was received by the Branch on December 29, 2016 and was also sent to the landlord by registered mail on this same date. At the time of the hearing, the landlord had not received this evidence package.

The tenant submitted that this evidence package was not provided within the required timelines as he had purchased a new house and he had also went out of the country for a couple months.

The tenant failed to show that there were extraordinary reasons preventing him from submitting the evidence package within the required timelines or that this evidence was

not available earlier. The tenants' 16 page evidence package submitted on December 29, 2016 was not accepted or considered in this decision.

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 recover the filing fee for this application from the tenant?

Background

The tenancy for this two bedroom apartment unit began on June 1, 2011. The tenants vacated the rental unit on June 30, 2016. The monthly rent prior to the end of the tenancy was \$1000.00/month. The tenants paid a security deposit of \$400.00 at the start of the tenancy which the landlord continues to retain.

The parties were involved in a previous hearing with respect to this tenancy on July 12, 2016. That hearing dealt with the tenants' application to cancel a 10 Day Notice to End tenancy for Unpaid Rent. As per the decision issued on July 12, 2016, the tenants' application to cancel the 10 Day Notice was withdrawn as they had already vacated the rental unit. The Arbitrator did not make any findings on the merits of the 10 Day Notice.

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: June 2016 rent

The landlord testified that the tenants only paid \$250.00 for the month of June 2016. The landlord testified he always issued receipts in the past and did not issue any receipt for this month as rent was not paid in full.

The tenant testified that he paid \$1000.00 in cash to the landlord on May 28, 2016 for June 2016 rent. The tenant testified that this was the basis for filing an application to dispute the 10 Day Notice. The tenant did not have a receipt for this payment as he claims rent receipts were never issued by the landlord over the past 5 years. The tenant also referred to bank statements which he submitted as evidence in the previous hearing. The tenant testified that these statements show he withdrew \$1400.00 from the bank on May 28, 2016, of which \$1000.00 was paid to the landlord. The tenant

submits that he was not aware he had to resubmit the evidence for this hearing as he was under the impression that the matter had been resolved at the previous hearing.

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.

In the absence of any receipt for the alleged payment of rent, I find that on a balance of probabilities the rent was not paid in full for the month of June 2016. The tenant did not provide sufficient evidence to establish that rent was paid in full by cash on May 28, 2016. The tenant mistakenly relied on evidence submitted in the previous hearing which was not before the Arbitrator in this hearing. The tenant ought to have known that the landlord was pursuing a monetary order for the outstanding amount as this was clearly outlined in the landlord's application. This outstanding monetary amount was not resolved in the previous hearing. Even if the bank statement evidence was before me, it would not on its own, conclusively support the tenant's argument that the money was paid to the landlord. The tenant was not able to provide any receipts or witness testimony that may have corroborated his testimony.

The landlord is awarded **\$750.00**.

#2: Loss or rent for July 2016

The landlord is claiming loss of rent for the month of July 2016 as the tenants failed to provide 1 Month Notice to end the tenancy. The landlord submitted a copy of the written notice to end the tenancy provided by the tenants on June 23, 2016 with an effective date of June 30, 2016. Further, the landlord argues that the key was not returned until July 12, 2016 so he argues the tenancy did not effectively end until this date. The landlord testified that he did not attempt to re-rent the rental unit for the month of July 2016 as he used the unit for his home based office. The unit was listed for sale on May 31, 2016 and eventually sold on August 7, 2016.

The tenant argues the landlord initiated the end of the tenancy when he issued the 10 Day Notice on June 3, 2016 so the tenants were not required to provide 1 month Notice.

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. Under this section, the party claiming the damage or loss must do whatever is reasonable to minimize the damage or loss.

The landlord's claim for loss of rent for the month of July 2016 is dismissed as the landlord did not attempt to mitigate the loss by re-renting the unit. Rather than advertise the unit for rent the landlord chose to use the unit for his own home based office and subsequently sold the property. The landlord's argument that the tenancy did not end until the key was returned is dismissed as the landlord had possession of the rental unit when the tenants vacated on June 30, 2016 and could have changed the locks to mitigate any potential loss.

#3, #4 & #5: Clean-up fee, door/window sill re-painting, laminate floor repair

The landlord is claiming \$150.00 for an estimated clean-up fee and \$200.00 for re-painting the door/window sills. The landlord testified he did the required cleaning himself and spent 8 hours at a rate of \$20.00 per hour. The landlord also testified he spent 8 hours doing the re-painting. The landlord submitted pictures of the inside of the stove, window sills and baseboards. The landlord did not have before pictures nor was a condition inspection report completed at the start of the tenancy. The landlord testified the laminate flooring was newly installed just before the tenancy began and provided pictures of the newly installed flooring. The landlord also provided pictures taken at the end of the tenancy showing various chips and ripples in the flooring. The landlord did not replace or repair the flooring or provide any invoice for the estimated cost to do the repair work.

The tenant testified that the rental unit was cleaned upon move-out. The paint on the window sills was cracking due to moisture and was not the result of neglect from the tenants. Further there was no condition inspection report completed at the start of the tenancy. The tenants argued there was no damage to the flooring other than normal wear and tear.

Section 37 of the Act requires that when a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean and undamaged except for reasonable wear and tear. 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. Under this section, the party claiming the damage or loss must do whatever is reasonable to minimize the damage or loss.

I find the landlord has not provided sufficient evidence to establish the rental unit was not left reasonably clean at the end of the tenancy or that any damage to the window

sills/doors was caused by the tenants in excess of reasonable wear and tear. The landlord did not provide a condition inspection report or before pictures in support of the condition of the rental unit at the start of the tenancy. The landlord's claim for clean-up fees and time spent re-painting is dismissed.

I accept the landlord's testimony and picture evidence that the laminate flooring was damaged at the end of the tenancy. I accept the landlord's evidence that the flooring was new at the start of the tenancy. However, I find the landlord's has not provided any invoices or estimates in support of his claim of \$3000.00 to repair the flooring. There is no evidence that the entire flooring would need to be replaced versus the individual damaged pieces. As the landlord has failed to prove the amount of or value of the loss, this aspect of the landlord's claim is dismissed.

#6 and #7: rental loss and income loss for preparing application

The landlord is claiming loss of rent in the amount of \$2700.00 suffered after the tenants gave notice to end tenancy in January 2015 and then subsequently withdrew it. The landlord is claiming he had a new tenant in place at a higher rent but was forced to continue the tenancy with the current tenants. The landlord is also claiming loss of income for \$3000.00 for preparing the application for dispute.

These portions of the landlord's claim are dismissed. The landlord could have applied under the Act for an order of possession when the tenants failed to vacate after giving notice. The landlord re-instated the tenancy and cannot now claim a loss of rent. The Act does not provide for recovery of costs associated with filing an application other than the filing fee itself. In either event, the landlord has failed to provide any supporting evidence to prove a loss of \$3000.00 for filing the application.

filing fee

As the landlord was only marginally successful in this application, I find that the landlord is entitled to recover **\$50.00** (1/2 the filing fee) paid for this application for a total monetary award of **\$800.00**.

The landlord continues to hold a security deposit of \$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 **\$400.00.**

Conclusion

Pursuant to section 67 of the *Act*, I grant the landlord a Monetary Order in the amount of **\$400.00.** 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: January 03, 2017

Residential Tenancy Branch