



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND MNR MNDC SS FF

Introduction

This hearing was convened to hear matters pertaining to an Application for Dispute Resolution filed by the Landlord on July 8, 2016. The Landlord filed seeking a Monetary Order for: unpaid rent or utilities; damage to the unit, site or property; money owed or compensation for damage or loss under the *Act*, Regulation, or tenancy agreement; for substitute service; and to recover the cost of the filing fee. Although marked on the application for Dispute Resolution, the Landlord did not request an order for substitute service of any documents.

The hearing was conducted via teleconference and was attended by the Landlord. No one was in attendance at the hearing on behalf of the respondent Tenant. The Landlord provided affirmed testimony that the Tenant was served notice of this application and this hearing by registered mail July 09, 2016. Canada Post tracking receipts were submitted in the Landlord's documentary evidence.

Section 90(a) of the *Residential Tenancy Act* (the "Act") states that a document served by mail is deemed to have been received five days after it is mailed.

Based on the undisputed evidence of the Landlord, I find the Tenant was deemed served notice of this application and hearing on July 14, 2016, five days after they were mailed. Accordingly, the hearing continued to hear the undisputed evidence of the Landlord in absence of the Tenant.

Issue(s) to be Decided

Has the Landlord proven entitlement to monetary compensation?

Background and Evidence

The Landlord submitted evidence that the Tenant entered into a fixed term written tenancy agreement that began in early February 2014 and was not set to end until July 31, 2014.

I heard the Landlord state that rent was initially \$1,200.00 and she entered into an agreement with the Tenant to drop the rent to \$1,160.00 until he acquired a roommate.

Once the Tenant had a roommate move into the unit the rent would return to \$1,200.00 payable on the first of each month. The Tenancy agreement submitted into evidence included the following additional term: "in the event another adult tenant moves in rent will increase". On February 1, 2014 the Tenant paid \$800.00 as the security deposit.

The Landlord testified that on March 17, 2015, the Tenant informed her that a roommate had moved into the rental unit. The Tenant paid \$5.05 for additional keys to be cut plus a \$25.00 key fob deposit for the additional fob for his roommate. The roommate failed to return the fob and keys at the end of the tenancy; therefore, the Landlord retained the key fob security deposit. The Tenant did not pay the additional \$40.00 per month rent for the six months of the tenancy that his roommate lived in the unit (March – August 2015). As a result the Landlord is claiming the unpaid rent of \$240.00 (6 x \$40.00).

The Landlord testified the Tenant agreed to meet with her to conduct the move out inspection and condition report on August 31, 2015. However, when the Landlord attended the rental building the Tenant was in the lobby and handed the Landlord a completed condition inspection report form. The Landlord stated that she told the Tenant she was not agreeable to him completing the condition form in her absence. She stated that it was during that conversation that the Tenant told her he needed to keep the keys for a bit longer so he could repair the damage that had been caused to the wall in the unit. She stated he also tried to get her to agree to paint the entire unit because he had left numerous holes in the walls.

The Landlord submitted that the Tenant did not return the keys to the concierge until September 7, 2015. She stated that is when she completed her section of the condition inspection report form noting the wall damage that was left unrepaired and the required cleaning. She now seeks to recover the repair costs as follows: \$250.00 wall repair; \$100.00 wall painting; \$232.00 for loss of rent for September 1 – 7, 2015; plus \$65.00 cleaning costs.

The Landlord stated that she was served a copy of a previous Decision dated February 18, 2016. That Decision related to the Tenant's application for Dispute Resolution and ordered the disbursement of the security deposit.

In support of her application, the Landlord submitted: the tenancy agreement; tenancy attachment; emails between the Landlord and Tenant; the notice to end tenancy; the condition inspection report form; monetary order worksheet; and a written submission.

Analysis

After careful consideration of the foregoing, documentary evidence, and on a balance of probabilities I find as follows:

Section 7 of the *Act* provides as follows in respect to claims for monetary losses and for damages made herein:

- 7(1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.
- 7(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

Section 67 of the Residential Tenancy Act states that without limiting the general authority in section 62(3) [*director's authority*], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

Under section 26 of the Act, a tenant is required to pay rent in full in accordance with the terms of the tenancy agreement, whether or not the landlord complies with this Act. A tenant is not permitted to withhold rent without the legal right to do so. A legal right may include the landlord's consent for deduction; authorization from an Arbitrator or expenditures incurred to make an "emergency repair", as defined by the Act.

I accept the Landlord's undisputed evidence the Tenant, with a roommate, was required to pay \$1,200.00 rent each month. I further accept the Tenant paid only partial rent (\$1,160.00 per month) for March 2015 to August 31, 2015, leaving a balance owed of \$240.00, pursuant to section 26 of the Act. Accordingly, I grant the Landlord's undisputed claim for unpaid rent in the amount of **\$240.00**, pursuant to section 67 of the Act.

I further accept the Tenant over held possession of the rental unit until September 7, 2015 which caused the Landlord to suffer a loss of one week's rent. Accordingly, I grant the Landlord's undisputed claim for loss of rent in the amount of **\$232.00**, pursuant to section 67 of the Act.

Section 37(2) of the Act provides 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; and must return all keys to the Landlord.

I accept the Landlord's undisputed evidence that the Tenant left the rental unit requiring additional cleaning and repairs. Therefore, I find the Tenant breached section 37 of the Act. In addition, I find the Tenant's breach caused the Landlord to suffer a loss of \$250.00 for wall repairs; \$100.00 for painting of walls; and \$65.00 cleaning costs. Accordingly, I grant the undisputed application for cleaning and repairs in the amount of **\$415.00**, pursuant to section 67 of the Act.

Section 72(1) of the Act stipulates that the director may order payment or repayment of a fee under section 59 (2) (c) [*starting proceedings*] or 79 (3) (b) [*application for review*]

of director's decision] by one party to a dispute resolution proceeding to another party or to the director.

The Landlord has succeeded with their application; therefore, I award recovery of the **\$100.00** filing fee, pursuant to section 72(1) of the Act.

The Tenant is hereby ordered to pay the Landlord total award of **\$987.00** forthwith.

In the event the Tenant does not comply with the above order, the Landlord has been issued a Monetary Order in the amount of **\$987.00** which may be enforced through Small Claims Court upon service to the Tenant.

Conclusion

The Landlord succeeded with their application and was awarded monetary compensation of **\$987.00**.

This decision is final, legally binding, 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: January 16, 2017

Residential Tenancy Branch