Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes   MND MNR MNSD MNDC FF

Introduction

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

The landlord and an agent for the landlord (the "agent") attended the teleconference hearing and gave affirmed testimony. During the hearing the landlord and agent were given the opportunity to provide their 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 and agent testified that the Notice of Hearing, Application and documentary evidence were served on the tenant by registered mail on July 19, 2016 to the address provided by the tenant in writing as the tenant's written forwarding address. The landlord provided a registered mail tracking number in evidence which has been included on the cover page of this decision for ease of reference. Section 90 of the *Act* states that documents served by registered mail are deemed served five days after they are mailed. The landlord affirmed that the registered mail package was returned to the landlord as "unclaimed". Based on the above, and without any evidence to prove to the contrary, I accept that the tenant was deemed served on July 24, 2016 with the Notice of Hearing, Application and documentary evidence pursuant to section 90 of the *Act.* I note that refusal or neglect to pick up a registered mail package is not a ground for a Review Consideration under the *Act.*

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

The landlord affirmed that a fixed term tenancy began on February 1, 2013 and reverted to a month to month tenancy after August 1, 2013. Originally monthly rent was $900.00 per month and increased during the term of the tenancy to the most recent amount of $940.00 per month and was due on the first of each month. The tenant paid a security deposit of $450.00 at the start of the tenancy which the landlord continues to hold. The tenant vacated the rental unit on July 1, 2016.

The landlord's monetary claim for $6,240.13 contained a minor adding error regarding the filing fee which was listed as $40.00 and should have read $100.00 and to which I amend to $6,267.13 pursuant to section 64(3) of the Act as follows:

ITEM DESCRIPTION	AMOUNT CLAIMED
1. Stove repair	$200.00
2. Shower stall purchase and install	$1,500.00
3. 2 bedrooms repairs (re-lay floor, install underlay and carpet)	$2,500.00
4. Replace cracked door	$500.00
5. Unpaid utilities (January to May 2016)	$437.13
6. Unpaid utilities (June 2016)	$90.00
7. Unpaid rent (June 2016)	$940.00
8. Recovery of cost of filing fee	$100.00
TOTAL	$6,267.13

Regarding the damages claim described further below, the landlord affirmed that while the landlord was only claiming $6,267.13 which includes unpaid rent, unpaid utilities, and other items, the landlord actually spent much more than what is being claimed the landlord will remain consistent with her original claim which was based on the estimates which turned out to be less than the actual costs paid by the landlord. As a result, the

descriptions below include the estimate totals versus the higher actual totals in terms of the damages portion of the landlords' monetary claim.

In addition, regarding the condition inspection report, the landlord testified that the tenant failed to attend for the first scheduled condition inspection so a Notice of Final Opportunity to Schedule a Condition Inspection (the "Notice of Final Opportunity") was mailed to the tenant via registered mail and scheduled for July 14, 2016 at 9:00 p.m. which the tenant also failed to attend and as a result, the outgoing condition inspection reports was completed in the tenant's absence. A copy of the condition inspection report and the Notice of Final Opportunity was submitted in evidence by the landlord.

Regarding item 1, the landlord has claimed $200.00 to repair the stove and referred to the condition inspection report submitted in evidence which the landlord indicates supports this portion of her monetary claim. The landlord also referred to photographic evidence submitted in support of this portion of her claim.

Regarding item 2, the landlord testified that the tenant damaged the fiberglass shower stall and referred to the condition inspection report and photographic evidence in support of her testimony. The landlord originally estimated $1,500.00 to remove, replace and install the new shower stall which ended up being more than her estimate. The landlord testified that all damages have been repaired and bills paid which cost the landlord much more than the original estimated claim as submitted.

Regarding item 3, the landlord stated that the tenant removed carpet and underlay in the two bedrooms and damaged the flooring resulting in over $2,500.00 to repair the floor, underlay and carpet. The landlord referred to the condition inspection report and photographic evidence submitted in support of this portion of her monetary claim.

Regarding item 4, the landlord has claimed $500.00 to replace a cracked entry door and of which the landlord provided both photographic evidence and referred to the condition inspection report during the hearing. The landlord testified that the tenant changed locks without permission which may have caused the crack in the door which could not be repaired and had to be replaced.

Regarding items 5 and 6, the landlord stated that the tenants' portion of electrical and gas utilities was 40% and that for item 5, the tenant failed to pay $437.13 in utilities, and for item 6, failed to pay $90.00 in utilities. The landlord read from the tenancy agreement addendum, item #2 which indicates that the tenant is required to pay 40% of hydro and 40% of the gas bill and that the upper tenant pays the other 60% of the utility bills.

Regarding item 7, the landlord stated that the tenant was paid the equivalent of one month's rent due to the landlord serving a 2 Month Notice to End Tenancy for Landlord's Use of Property (the "2 Month Notice") on the tenant. The landlord affirmed that the tenant failed to pay June 2016 rent however and that the landlord was not aware that she could have simply provided the last month of rent free of charge as compensation instead. The landlord clarified that due the landlord paying the tenant $940.00, the tenant still owes June 2016 rent.

Regarding item 8, the filing fee will be addressed later in this decision below.

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 fully successful as I find the evidence supports the landlord's claim and is reasonable. I also find the tenant breached section 26 of the *Act* which states in part:

> **Rules about payment and non-payment of rent**
>
> **26** (1) **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.
>
> [my emphasis added]

In the matter before me, as the landlord paid the tenant the equivalent of one month's rent as compensation pursuant to section 51 of the *Act* as the landlord confirms having served the tenant with a 2 Month Notice, I find the tenant breached section 26 of the *Act* by failing to pay June 2016 rent, having accepted the compensation from the landlord. As a result, I find the landlord has met the burden of proof and is owed June 2016 rent in the amount of $940.00 as claimed.

In addition, I find the landlord is entitled to the recovery of the cost of their filing fee of $100.00 as their application was fully successful. Given the above, I find the landlord has proven their claim for items 1-8 inclusive in the amount of **$6,267.13**. The landlord continues to hold the tenant's security deposit of $450.00 which has not accrued any interest to date.

Pursuant to section 72 of the *Act,* **I authorize** the landlord to retain the tenant's full security deposit of $450.00 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 **$5,817.13**

Conclusion

The landlord's application is fully successful.

The landlord has been authorized to retain the tenant's full security deposit of $450.00 in partial satisfaction of the landlord's 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 $5,817.13. 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: January 23, 2017

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Residential Tenancy Branch