



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

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

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the Act) for:

- an order of possession pursuant to section 55;
- a monetary order for unpaid rent, for damage to the rental unit, and for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38;
- authorization to recover his filing fee for this application from the tenant pursuant to section 72.

The landlord attended the hearing via conference call and provided undisputed affirmed testimony. The tenant did not attend or submit any documentary evidence. The landlord stated that the tenant was served with the notice of hearing package in person on July 30, 2016 with a witness. The landlord was unable to provide sufficient evidence that the tenant was served with the submitted documentary evidence provided to the Residential Tenancy Branch. I accept the undisputed affirmed evidence of the landlord and find that the tenant was properly served with the notice of hearing package on July 30, 2016 as claimed by the landlord. The landlord provided insufficient details regarding the service of the submitted documentary evidence to the tenant and as such, I find that the landlord's documentary evidence package shall be excluded.

It was clarified with the landlord that possession of the rental unit is no longer required as the tenant had vacated the rental unit on July 31, 2016. It was also clarified with the landlord that the \$100.00 for a filing fee of a previous direct request hearing cannot be recoverable under the Act. It was clarified with the landlord that the Act does not provide for punitive damages and that this portion of the landlord's application is dismissed.

Issue(s) to be Decided

Is the landlord entitled to a monetary order for unpaid rent, for damage, for money owed or compensation for damage or loss and recovery of the filing fee?

Is the landlord entitled to retain all or part of the security deposit?

Background and Evidence

While I have turned my mind to all the evidence, and the testimony of the landlord, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

The landlord provided undisputed affirmed testimony that this tenancy began on February 1, 2015 on a month-to-month basis. The monthly rent was \$1,300.00 payable on the 1st day of each month and a security deposit of \$750.00 was paid on December 1, 2014. The landlord provided testimony that the monthly rent was increased on June 1, 2016 based upon a notice of rental increase dated February 19, 2016 in which it states that the monthly rent shall be increased from \$1,300.00 to \$1,337.00.

The landlord stated that a condition inspection report was completed for the move-in on February 5, 2015, but that no condition inspection report was completed for the move-out. The landlord stated that no notice of a final opportunity was given to the tenant to schedule a condition inspection report for the move-out. The landlord stated that the tenant has failed to provide a forwarding address in writing to the landlord for the return of the security deposit and that the tenant's address was obtained through alternate means through court action.

The landlord seeks a clarified monetary claim of \$2,631.00 which consists of:

\$1,337.00	Unpaid Rent, July 2016
\$294.00	Painting
\$60.00	Dump Fees
\$200.00	Labour, 8 hours removing debris and garbage
\$200.00	Labour, 8 hours cleaning
\$200.00	Labour, 8 hours repairs
\$140.00	Order of Possession Fees
\$200.00	Ozone machine rental, removal of smoke damage

The landlord provided undisputed affirmed testimony that the tenant failed to pay rent of \$1,337.00 for July 2016 before vacating the rental unit on July 31, 2016. The landlord

stated that after the tenant vacated the rental unit, the landlord discovered garbage and debris throughout the rental property, damage to the walls and the rental left dirty requiring cleaning.

The landlord stated that a 10 Day Notice for Unpaid Rent was served to the tenant on July 2, 2016 which indicated that the tenant failed to pay rent for July 2016. The landlord stated that damage was observed to the rental property walls requiring repairs (mudding and sanding) as well as re-painting (3 gallons). The landlord provided direct testimony that he spent 8 hours clearing debris and garbage that required a trip to the dump incurring dump fees. The landlord provided direct testimony that he spent 8 hours of cleaning to make the rental unit rentable. The landlord provided direct testimony that he spent 8 hours making repairs to the walls and painting. The landlord provided direct testimony that he incurred a \$100.00 court filing fee for enforcement of a previous arbitration. The landlord stated that he paid a friend \$50.00 to rent an ozone machine to remove smoke damage and that he spent 6 hours using the machine.

The landlord stated that he had copies of invoices/receipts, 10 Day Notice to End Tenancy for Unpaid Rent and a journal log of all of the costs incurred and the work performed.

Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. In this case, the onus is on the landlord to prove on the balance of probabilities that the tenant caused the loss/damage and that it was beyond reasonable wear and tear that could be expected for a rental unit of this age.

The landlord relies solely on his undisputed affirmed testimony. On this basis, I accept the undisputed affirmed testimony of the landlord and find on a balance of probabilities that the landlord has failed to provide sufficient evidence to satisfy me of the monetary claims. The landlord has failed to provide sufficient evidence of the damage or loss and that it was through the neglect of the tenant through photographs or a completed condition inspection report for the move-in or the move-out. The landlord has also failed

to provide sufficient evidence of an actual amount of loss or damage through receipts/invoices for expenses incurred or any other detailing of time spent for labour. The landlord's application has failed.

I decline to order the retention of the \$750.00 security deposit as the landlord has stated that the tenant has not provided her forwarding address in writing to the landlord as per section 38 of the Act.

Conclusion

The landlord's application for dispute is dismissed without leave to reapply.

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 31, 2017

Residential Tenancy Branch