Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Vantage West Realty
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes   MNR, MND, MNDC, MNSD, FF

Introduction

This hearing was convened in response to an application by the Landlord pursuant to the
Residential Tenancy Act (the "Act") for Orders as follows:

1. A Monetary Order for unpaid rent - Section 67;

2. A Monetary Order for damages to the unit - Section 67;

3. A Monetary Order for compensation - Section 67;

4. An Order to retain the security deposit - Section 38; and

5. An Order to recover the filing fee for this application - Section 72.

The Tenant did not attend the hearing. I accept the Landlord's evidence that the Tenant was
served with the application for dispute resolution and notice of hearing (the "Materials")
by *registered mail* in accordance with Section 89 of the Act. Section 90 of the Act provides that
a document served in accordance with section 89 of the Act is deemed to be received if given or
served by mail, on the 5th day after it is mailed. Given the evidence of registered mail I find that
the Tenant was deemed to have received the Materials. The Landlord was given full
opportunity to be heard, to present evidence and to make submissions.

Preliminary Matter

In an evidence package the Landlord provided, inter alia, a monetary order worksheet detailing
a claimed amount of $6,280.85. The application sets out the amount claimed at $3,649.79 and
details this claim is in relation to removal by a bailiff. There are no other details or particulars of
any other claims. No amendment was made to the application.

Residential Tenancy Act Rules of Procedure provides that a claim is limited to what is stated in
the application. Given the detail provided in the application I find that the claimed amount is in

relation to removal by a bailiff. This detail would reasonably include rents and, if relevant, utilities owed to the date of such removal and I find therefore that the claim is limited to bailiff and rent and utility costs. As there are no details in relation to any other claims in the application, I decline to consider any other claims detailed in the monetary order worksheet.

As the application sets the monetary claim at $3,649.79 and as there has been no amendment to this application I find that the claim is limited to the lesser amount set out in the application and claims to that amount will be considered. The Landlord was given a brief an opportunity at the onset of the hearing to identify the claimed amounts being made for the total amount set out in the application.

Issue(s) to be Decided
Is the Landlord entitled to unpaid rents and utilities?
Is the Landlord entitled to recovery of bailiff costs for obtaining possession of the unit?

Background and Evidence
The tenancy started on February 1, 2016. Rent of $1,850.00 was payable on the first day of each month. At the outset of the tenancy the Landlord collected $925.00 as a security deposit and $925.00 as a pet deposit. On July 15, 2016 the Landlord obtained an order of possession of the unit (the "Order") and a monetary order of $927.07 for unpaid rent to and including July 2016. The Order provides that the Tenant is required to deliver vacant possession of the unit no later than 2 days after receipt of the Order.

The Landlord states that the Order was served on the Tenant on July 19, 2016. The Landlord states that the Tenant did not move out of the unit and that on August 9, 2016 a bailiff executed a writ of possession of the unit, removing the remaining belongings and securing the unit from the Tenant. The Landlord claims $1,694.53 and $120.00 for the costs of obtaining a writ and the bailiff.

The Landlord claims $106.06 for the cost of water usage for the period April 1 to June 30, 2016. The Landlord claims rent of $537.10 for the period August 1 to 9, 2016 inclusive. The Landlord was not sure how to claim the over holding costs and included claims of $1,009.14 and 1,600.00 for additional unpaid rents.

Analysis

Section 57(3) of the Act provides that a landlord may claim compensation from an over holding tenant for any period that the over holding tenant occupies the rental unit after the tenancy is ended. Given the date that the Tenant was given the Order of Possession I find that the tenancy ended on July 21, 2016 when the Tenant was required to vacate the unit. Based on the undisputed evidence of the Landlord that the Tenant did not move out of the unit after being given the order of possession and that a bailiff was required to obtain possession of the unit I find that the Landlord is entitled to costs to obtain a writ of possession and subsequent possession of the unit through a bailiff in the amounts of **$120.00** and **$1,694.53**. The Landlord is also entitled to over holding rents of **$537.10** for the period August 1 to 9, 2016 inclusive. As the Landlord was provided with a monetary order for unpaid rent to the end of July 21, 2016 I find that the Landlord may not make any other claims for unpaid rent and I dismiss the Landlord's claims for $1,009.14 and 1,600.00. As the Landlord's application has been successful I find that the Landlord is also entitled to recovery of the **$100.00** filing fee for a total entitlement of **$2,451.63**. Deducting the combined security and pet deposit of **$1,850.00** plus zero interest leaves **$601.63** owed by the Tenant to the Landlord.

Conclusion

I Order the Landlord to retain the security and pet deposit plus interest of $1,850.00 in partial satisfaction of the claim and I grant the Landlord an order under Section 67 of the Act for the remaining amount of **$601.63**. If necessary, this order may be filed in the Small Claims 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: February 20, 2017

_____

Residential Tenancy Branch