



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MND, MNDC, FF

Introduction

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

- 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*, *Residential Tenancy Regulation* ("Regulation") or tenancy agreement pursuant to section 67; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The tenant did not participate in the conference call hearing, which lasted approximately 15 minutes. The landlord's three agents (collectively the "landlord") attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The landlords confirmed they were each agents of the landlord's company named in this application, and had authority to speak on its behalf.

The landlord gave affirmed testimony that the landlord personally served the tenant with the landlord's application and documentary evidence on August 16, 2016. The landlord attached a witnessed proof of service, signed on August 16, 2016, with their application. In accordance with sections 88 and 89 of the *Act*, I find that the tenant was served with the application and documentary evidence on August 16, 2016.

Preliminary Issue – Landlord Subsequent Evidence Package

The landlord testified that the tenant vacated the rental unit on August 31, 2016 and did not provide a forwarding address. Therefore the landlord's subsequent six page evidence package provided to the Residential Tenancy Branch on January 27, 2017 was not provided to the tenant.

A party to a dispute resolution hearing is entitled to know the case against him/her and must have a proper opportunity to respond to that case. There would be a denial of the

fundamental right to natural justice if I were to consider evidence that was not provided to one of the parties. It would prejudice the tenant to admit evidence that she has not had the opportunity to review. For these reasons, I have not relied on the landlord's subsequent six page evidence package to form any part of my decision.

Issue(s) to be Decided

Is the landlord entitled to 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?

Is the landlord authorized to recover the filing fee for this application from the tenant?

Background and Evidence

As per the submitted tenancy agreement and testimony of the landlord, the tenancy began on July 1, 2015 on a fixed term until May 31, 2016 at which time the tenancy continued on a month-to-month basis. Rent in the amount of \$1,018.00 was payable on the first of each month. The tenant remitted a security deposit in the amount of \$495.00 at the start of the tenancy.

The landlord seeks a monetary order of \$31.00 for unpaid rent from June 2016 to July 2016. The landlord testified that a Notice of Rent Increase was issued to the tenant on January 18, 2016, increasing the rent \$28.00 per month effective June 1, 2016. The landlord claimed the tenant paid a total of \$2,005.00 in rent for the above two months.

The landlord testified that prior to vacating the rental unit; the tenant caused unnecessary damage to the rental unit door frame. Specifically the tenant fell, telephoned 911 and provided first responders with the wrong phone number for building service. This in turn prevented first responders from gaining easy access leaving no alternative but to force entry. The forced entry caused damage in the amount of \$1,186.59 to the door frame.

The tenant informed the landlord that despite the clause in the tenancy agreement requiring her to hold sufficient insurance, she did not. Therefore, the parties entered into a twelve month payment plan effective June 7, 2016. The landlord claims the first three payments cleared for a total of \$300.00 paid towards the outstanding debt. The tenant ended her tenancy and vacated August 31, 2016. The tenant advised the landlord she would not pay the remainder outstanding balance and requested her postdated cheques back.

The landlord maintained possession of the postdated cheques and was unsuccessful in securing funds for the fourth payment. The landlord now seeks the balance of the debt in the amount of \$886.59.

The landlord is also seeking to recover the \$100.00 filing fee for this application from the tenant.

Analysis

Section 26 of the *Act* requires the tenant to pay rent on the date indicated in the tenancy agreement, which is the first day of each month. Section 7(1) of the *Act* establishes that a tenant who does not comply with the *Act*, *Regulation* or tenancy agreement must compensate the landlord for damage or loss that results from that failure to comply.

I find that the landlord proved that the current rent for this unit is \$1,018.00. I find the landlord provided undisputed evidence that the tenant failed to pay full rent from June 2016 to July 2016. Therefore, I find that the landlord is entitled to \$2,036.00 less the \$2,005.00 payment for a total of \$31.00 in rent.

Section 32 of the *Act* requires a tenant to repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant. Based on the undisputed evidence of the landlord, I find the tenant's act of providing the wrong phone number led to the destruction of the door frame by first responders. In the absence of the tenant making the repair herself, I find the tenant is responsible for the costs incurred in repairing the damage.

In regards to the payment plan, I find based on the evidence presented that the payment plan was contingent on a continued tenancy. As the tenancy has now ended, I find the landlord is entitled to the remaining outstanding balance of \$886.59 for damage to the door frame.

As the landlord was successful in this application, I find that the landlord is entitled to recover the \$100.00 filing fee paid for the application, for a total award of \$1,017.59.

The landlord's application does not seek to retain the security deposit and the landlord did not confirm whether the landlord still maintains this deposit. Consequently I have not utilized the offsetting provisions of section 72 of the *Act*. I caution the landlord to follow the provisions of section 38 of the *Act* in relation to the security deposit.

Conclusion

I issue a monetary order in the landlord's favour in the amount of \$1,017.59 against the tenant.

As the landlord has testified that the landlord was unable to negotiate the most recent of the tenant's postdated cheques in the landlord's possession and to give full effect to the attached monetary order, I order the landlord to destroy any postdated cheques in the landlord's possession.

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 16, 2017

Residential Tenancy Branch