



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND MNR MNSD 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 and for damage to the unit 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 her filing fee for this application from the tenant pursuant to section 72.

The hearing was conducted by conference call. The tenant did not attend this hearing, although I waited until 1:52 p.m. in order to enable the tenant to connect with this teleconference hearing scheduled for 1:30 p.m. The landlord attended the hearing and was given a full opportunity to provide testimony and present evidence.

The landlord testified that on September 1, 2016, a copy of the Application for Dispute Resolution and Notice of Hearing was sent to the tenant by registered mail. The landlord provided a registered mail tracking number in support of service.

Based on the above evidence, I am satisfied that the tenant was deemed served with the Application for Dispute Resolution and Notice of Dispute Resolution Hearing pursuant to sections 89 & 90 of the Act. The hearing proceeded in the absence of the tenant.

Preliminary Issue – Service of landlord's evidence package

The landlord submitted a five page evidence package on January 30, 2017 containing receipts in support of the landlord's claim for damages caused by the tenant to the rental unit. The landlord testified that she failed to provide a copy of this evidence package to the tenant. The landlord was advised that I would be excluding any evidence that was not served upon the respondent. The landlord was provided the

option to withdraw her application in its entirety and reapply so she can serve the evidence package to the tenant. The landlord chose to withdraw her claim for damages and proceed with the remainder of her application.

Issues

Is the landlord entitled to a monetary award for unpaid rent?

Is the landlord entitled to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary award requested?

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

Background and Evidence

The tenancy began on September 1, 2014 and ended on August 24, 2016. The monthly rent was \$925.00 payable on the 1st day of each month. The tenant paid a security deposit of \$440.00 at the start of the tenancy which the landlord continues to hold.

The landlord testified the tenant failed to pay rent in full for the months of June, July and August 2016. The landlord provided a monetary order worksheet in which she claims outstanding rent comprised of the following:

- A balance of \$175.00 outstanding rent for the month of June 2016.
- The full amount of \$925.00 rent for the month of July 2016.
- A prorated amount of \$716.00 for the period of August 1-24, 2016.

Analysis

Section 26 of the Act requires that 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.

I accept the landlord's uncontested testimony and find that the tenant was obligated to pay monthly rent in the amount of \$925.00 but failed to pay rent in full for the months of June, July & August 2016.

I find the landlord is entitled to a monetary award in the amount of \$1,816.00.

As the landlord was successful in this application, I find that the landlord is entitled to recover the \$100.00 filing fee paid for this application for a total monetary award of \$1,916.00.

The landlord continues to hold a security deposit and pet deposit in the amount of \$440.00. I allow the landlord to retain the security deposit and pet deposit in partial satisfaction of the monetary award pursuant to section 38 of the Act.

Therefore, I find that the landlord is entitled to a Monetary Order in the amount of \$1,476.00.

Conclusion

Pursuant to section 67 of the *Act*, I grant the landlord a Monetary Order in the amount of \$1,476.00. Should the tenant fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial 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 28, 2017

Residential Tenancy Branch

