



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute codes MNR MNDC 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 loss 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 the filing fee for this application from the tenant pursuant to section 72.

The hearing was conducted by conference call. The tenants did not attend this hearing, although I waited until 1:42 p.m. in order to enable the tenants 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 22, 2016, a copy of the Application for Dispute Resolution and Notice of Hearing was sent to both respondents named in this application by registered mail. The landlord provided registered mail tracking number(s) in support of service. The landlord testified that the registered mail for both respondents was sent to an address provided on the lease agreement by the respondent G.G. The landlord testified that G.G. signed the lease as a co-signor and did not himself reside in the rental unit. The landlord testified the tenant A.M. vacated the rental unit sometime towards the end of August 2016 and to her knowledge has left the country.

Based on the above evidence, I find that only the respondent G.G. is 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 respondents and any monetary order arising out of this application will be issued naming only the respondent G.G. as liable.

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Issues

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

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 February 1, 2016 with a monthly rent of \$900.00 payable on the 1st day of each month. The lease was for a fixed term expiring on September 30, 2016. The tenant paid a security deposit of \$450.00 at the start of the tenancy which the landlord continues to hold.

The landlord's claim is for outstanding rent in the amount of \$1800.00 for the months of August and September 2016. The landlord testified that this includes unpaid rent of \$900.00 for August 2016 and loss of rent of \$900.00 for September 2016. The landlord testified they were informed that the tenant vacated the rental unit on August 30, 2016 without any prior notice. The landlord testified that due to the lack of notice they were not able to re-rent the unit until October 1, 2016. The landlord is also claiming \$200.00 for a strata fine charged to the landlord as a result of the tenant not complying with smoking bylaws. The landlord submitted correspondence from the strata council setting out this fine.

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 evidence and find that the tenant was obligated to pay monthly rent in the amount of \$900.00 but failed to pay rent for the months of August 2016 and September 2016. Although the tenant vacated at the end of August 2016, the tenant was still responsible for September 2016 rent as it was a fixed term lease. I accept the landlord's testimony that they were unable to mitigate the loss for September rent due to the lack of notice. I accept the landlord's claim for outstanding rent of \$1800.00. I also accept the landlord's claim for loss of \$200.00 due to the strata fine as supported by the landlord's testimony and submissions. The tenancy agreement provides that the tenant shall comply with strata by-laws. As the co-signor of the lease, I find the respondent G.G. is jointly and severally liable even though he may not have resided in the rental unit.

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 \$2100.00.

The landlord continues to hold a security deposit of \$450.00. I allow the landlord to retain the security 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 \$1650.00.

Conclusion

Pursuant to section 67 of the *Act*, I grant the landlord a Monetary Order in the amount of \$1650.00. 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: March 20, 2017

Residential Tenancy Branch