



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNR, MNSD, MNDC, FF

Introduction

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

- a Monetary Order for unpaid rent and damages 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; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The tenant did not attend this hearing, which lasted approximately 20 minutes. The landlord attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

The landlord testified that a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "10 Day Notice"), dated November 28, 2016 was served personally on the tenant on the same date. The 10 Day Notice was the subject of an earlier hearing under the file number on the first page before another arbitrator. The other arbitrator upheld the 10 Day Notice and issued an Order of Possession for the landlord but declined to issue a monetary award.

The landlord testified that the landlord's application for dispute resolution dated January 17, 2017 was served personally on the tenant on January 25, 2017. In accordance with sections 89 of the *Act*, I find that the tenant was served with the landlord's application on January 25, 2017.

Issue(s) to be Decided

Is the landlord entitled to monetary compensation as claimed?

Is the landlord entitled to keep all or a portion of the tenant's security deposit?

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

Background and Evidence

The landlord provided undisputed testimony regarding the following facts. This month-to-month tenancy began on May 1, 2016. Pursuant to the earlier hearing the tenancy ended December 7, 2016 and the tenant vacated the rental unit on or about January 31, 2017. The rent was \$950.00 payable on the first of the month. A security deposit of \$425.00 was paid by the tenant at the start of the tenancy and still held by the landlord.

The landlord testified that there is an arrear of \$2,770.00 for the tenancy. The landlord testified that the tenant failed to pay the full amount of rent for November and December, 2016 and January, 2017 and the tenant owes a total of \$2,770.00 rent for those months.

The landlord testified that the tenant interfered with her ability to find another renter for the rental unit. The landlord testified that she was not able to actively seek a new renter until the tenant vacated the rental unit on January 31, 2017. The landlord said that a new renter was found for the rental unit in late February and she received \$200.00 from the new renter for the portion of February that they occupied the rental unit.

Analysis

The landlord provided undisputed evidence at this hearing, as the tenant did not attend. I find that the tenant was obligated to pay the monthly rent in the amount of \$950.00. I accept the landlords' undisputed evidence that the total amount of arrears for this tenancy is \$2,770.00.

I accept the landlord's evidence that the tenant remained in the rental unit and prevented the landlord from advertising the unit to new renters. I find that the landlord did minimize the loss by finding a new renter for late February. I find that the landlord's loss attributable to the tenant is the rent for the month of February, less the amount received for the new tenancy is \$750.00.

Accordingly, I issue a monetary award in the landlords' favour for unpaid rent and damages of \$3,520.00 as at March 13, 2017, the date of the hearing, pursuant to section 67 of the *Act*.

As the landlord's application was successful, the landlord is also entitled to recovery of the \$100.00 filing fee for the cost of this application.

In accordance with sections 38 and the offsetting provisions of 72 of the *Act*, I allow the landlord to retain the tenant's security deposit of \$425.00 in partial satisfaction of the monetary award issued in the landlords' favour.

Conclusion

I issue a monetary order in the landlords' favour in the amount of \$3,195.00 under the following terms, which allows the landlord to recover unpaid rent and the filing fee for their application:

Item	Amount
Unpaid Rent November	\$870.00
Unpaid Rent December	\$950.00
Unpaid Rent January	\$950.00
Lost Rent February	\$750.00
Filing Fees	\$100.00
Less Security Deposit	-\$425.00
Total Monetary Order	\$3,195.00

The tenant must be served with this Order as soon as possible. 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 14, 2017

Residential Tenancy Branch