



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, 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 tenants' 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 tenants pursuant to section 72.

Both parties attended the hearing via conference call and provided affirmed testimony. The tenants confirmed that the landlord served the tenants with the notice of hearing package via Canada Post Registered Mail on September 29, 2016 and the submitted documentary evidence on March 7, 2017. The tenants stated that there were no issues regarding service of either the hearing package or the documentary evidence. The landlord confirmed that the tenants served to the landlord their 22 photographs via Canada Post Registered Mail on March 27, 2017 and that there were no service issues. I accept the undisputed affirmed evidence of both parties and find that both parties have been sufficiently served as per section 90 of the Act.

Issue(s) to be Decided

Is the landlord entitled to a monetary order for unpaid rent, for damage to the unit and recovery of the filing fee?

Is the landlord entitled to retain all or part of the security deposit?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

This tenancy began on October 1, 2015 on a fixed term tenancy ending on September 30, 2016 as shown by the submitted copy of the signed tenancy agreement dated September 9, 2015. The monthly rent was \$2,000.00 payable on the 1st day of each month. A security deposit of \$1,000.00 was paid on September 11, 2015.

The landlord seeks a monetary claim of \$2,566.03 which consists of:

| | |
|------------|-----------------------------|
| \$2,000.00 | Unpaid Rent, September 2016 |
| \$350.00 | Estimated Damages |
| \$216.03 | Locks |

The landlord stated the tenants vacated the rental unit September 15, 2016 and ordered a stop payment on the September 2016 rent of \$2,000.00. Both parties agreed that the tenant provided written notice to vacate the rental premises dated July 27, 2016 via email on September 2, 2016 for September 15, 2016. Both parties confirmed that the landlord immediately began advertising the rental unit to be re-rented. The landlord stated that the rental premise was not re-rented until October 1, 2016. The tenants confirmed that rent for September 2016 was not paid to the landlord.

The landlord also stated that the tenants left the rental premise with 23 holes in the walls of the kitchen, dining room and the garage. The tenants disputed this claim stating that although holes were left in the walls, the tenants have photographs showing only 9 holes in the living room, kitchen/dining room and the master bedroom, but did not submit the photographs. The landlord has also submitted a copy of the invoice from her "handyman" contractor for \$350.00. The tenants disputed this claim stating that the amount seemed excessive, but did not provide any evidence to dispute or contradict the invoice. The tenants also claimed that holes were present at the beginning of the tenancy, but were unable to provide sufficient evidence to support this claim.

The landlord also seeks recovery of \$216.03 for the replacement of locks. The landlord claims that the tenants left the keys on the counter of the rental premises without locking the doors. The landlord stated that all the keys were returned, but that she was unsure if anyone had entered the rental premises or copied the keys. The tenants disputed this claim.

In support of these claims the landlord has submitted:

A copy of the stopped payment cheque for September 1, 2016 rent
A copy of a notation from the bank confirming the reason for the stopped payment
A copy of a completed condition inspection report for the move-in dated September 30, 2015 and the move-out dated September 30, 2016.
A copy of the signed tenancy agreement dated September 9, 2015.
A copy of an invoice for repairs dated October 24, 2016.

The tenant submitted 22 photographs of:

1 photograph of miscellaneous items next to a gate.
21 photographs of text messages.

Analysis

I accept the undisputed evidence of both parties and find that the tenants left the rental premises without paying the September 2016 rent of \$2,000.00. The tenants confirmed the landlord's claim that a "stop payment" was made for the September 2016 rent in protest over issues for the tenancy. The tenants confirmed that no authorization was given by the Residential Tenancy Branch to not pay the rent.

Subsection 26(1) of the Act sets out:

A tenant must pay rent when it is due under the tenancy agreement....unless the tenant has a right under this Act to deduct all or a portion of the rent.

The tenants did not provide evidence that they were entitled to not pay any rent as a result of a prior order from the Residential Tenancy Branch.

The landlord testified that the tenant failed to pay rent for September 2016 of \$2,000.00. The tenants admitted that they did not pay September's rent. I also find based upon the direct testimony of both parties the landlord made reasonable efforts to mitigate any possible losses by advertising the premises for rent. Both parties confirmed that the landlord was able to re-rent the premises for October 1, 2016. As such, I find that the landlord has established a claim for \$2,000.00 in unpaid rent.

I also accept the undisputed affirmed testimony of both parties that the tenants left the rental premises with holes in the walls. Although the tenants have disputed that only 9 holes were left, the landlord has provided photographs of 23 holes. The landlord has also provided a copy of the invoice for \$350.00 for the repair of the holes and the completed condition inspection report for the move-in and the move-out. Although the

tenants have disputed the amount of invoice, the tenants have failed to provide sufficient evidence to contradict it. As such, I find on a balance of probabilities that the landlord has established her claim for damages of \$350.00.

The landlord has also made a claim for \$216.03 for the cost of new locks. I find that the landlord has failed in this portion of the claim. Both parties confirmed that the tenants returned all of the keys to the rental premises. The landlord bases her claim on her feeling that the keys were not directly returned to her and that the rental unit door was left unlocked. The tenants disputed this claim, but made no comments. I find that the landlord's "feeling" of what may happen is not justification for compensation for the cost of new locks. The landlord chose to change the locks based upon a "feeling". This portion of the landlord's claim is dismissed.

The landlord has established a monetary claim of \$2,350.00. Having been substantially successful in the application, I order that the landlord recover the \$100.00 filing fee from the tenants. I authorize the landlord to retain the \$1,000.00 security deposit in partial satisfaction of the claim.

Conclusion

The landlord is granted a monetary order for \$1,450.00.
The landlord may retain the \$1,000.00 security deposit in partial satisfaction of the claim.

This order must be served upon the tenants. Should the tenants fail to comply with the order, the 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 29, 2017

Residential Tenancy Branch