



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding INTERLINK REALTY
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNSD, MNR, FF

Introduction

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

- a monetary order for unpaid rent under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement, pursuant to section 67;
- authorization to retain 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 its application from the tenant, pursuant to section 72.

Both parties attended the hearing and were given full opportunity to present evidence and make submissions. The tenant acknowledged receipt of evidence submitted by the landlord, the tenant did not submit any documentary evidence for this hearing. Both parties gave affirmed testimony.

Issue to be Decided

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, Evidence

The landlord's testimony is as follows. The one year fixed term tenancy began on June 1, 2016 but ended early on October 1, 2016. The tenants were obligated to pay \$1700.00 per month in rent in advance and at the outset of the tenancy the tenants paid an \$850.00 security deposit. The landlord testified that the tenant wanted to break the lease and wanted to move out early. The landlord testified that they signed a Mutual

Agreement to End a Tenancy on September 30, 2017 to allow the tenant to move out on October 1, 2017. The landlord testified that they advised the tenant that they would be responsible for the loss of rent for October. The landlord testified that they also want to keep the deposit above and beyond the loss of rent for the tenant breaching the contract. The landlord testified that they re-rented the unit for November 1, 2016.

The tenant gave the following testimony. The tenant testified that he acknowledges that he was in the middle of a one year contract but was fearful for his safety. The tenant testified that the tenant that lived above him threatened him numerous times that required him to call the police on an average of six times per month. The tenant testified that he agrees to the landlord retaining \$100.00 from his deposit for suite cleaning but feels that is the extent of what he owes.

Analysis

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 arguments are reproduced here. The principal aspects of the landlords claim and my findings around each are set out below.

The tenant made allegations that he had to move out for fear of his safety, however, the tenant did not provide any documentary evidence to support that. In addition, when I asked the tenant details about the alleged threats he stated several times that "I don't remember exactly but I believe". I am unable to rely on the tenants testimony based on the inconsistent and spotty testimony. The landlord was clear and concise in giving their testimony. I found the landlord to be credible and accept that although the parties signed a Mutual Agreement to End the Tenancy, the landlord had not waived their right to seek the loss of rent for October 2016.

The landlord testified that they made great efforts to re-rent the unit after doing several showings and doing their reference checks. The landlord testified that they were able to rent the unit for November 1, 2016. Based on all of the above I find that the landlord is entitled to loss of revenue for October 2016 in the amount of \$1700.00. Both parties confirmed that they agreed that the landlord was entitled to \$100.00 for costs to clean the unit.

The landlord was also seeking to retain the security deposit above any loss of revenue as a “breach of contract penalty”. The tenancy agreement submitted into evidence does not address any liquidated damages clause or other costs for ending the tenancy early, accordingly; I dismiss this portion of the landlords’ application.

Conclusion

In summary, the landlord has been successful in the following claims:

Loss of Rent October 2016	\$1700.00
Cleaning Costs	\$ 100.00
Filing Fee	\$100.00
	\$
Less Deposits	-\$850.00
	\$
Total:	\$1050.00

The landlord has established a claim for \$1900.00. I order that the landlord retain the \$850.00 security deposit in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of \$1050.00. This order may be filed in the Small Claims 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: April 11, 2017

Residential Tenancy Branch