



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 landlords' application pursuant to the *Residential Tenancy Act* (the Act) for:

- a monetary order for unpaid rent and for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement 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 their filing fee for this application from the tenant pursuant to section 72.

Both parties attended the hearing via conference call and provided affirmed testimony. As both parties have attended and have confirmed receipt of the notice of hearing package, I am satisfied that both parties have been sufficiently served as per section 90 of the Act.

It was clarified with both parties at the outset that the landlord's request to retain monies relating to a separate tenancy could not be dealt with as part of this application.

Issue(s) to be Decided

Are the landlords entitled to a monetary order for unpaid rent, for money owed or compensation for damage or loss and recovery of the filing fee?

Are the landlords entitled to retain 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 February 28, 2015 on fixed term tenancy ending on February 28, 2016. The monthly rent was \$1,650.00 payable on the 1st day of each month and a security deposit of \$825.00 was paid. A mutual agreement to end the tenancy dated December 18, 2015 was agreed to end the tenancy on February 29, 2016.

The landlord seeks a monetary claim of \$1,730.50 which consists of:

\$1,650.00 Unpaid Rent, February 2016
\$40.25 Rent Increase, January 2016
\$40.25 Rent Increase, February 2016

The landlord provided affirmed testimony that the tenant vacated the rental unit without paying February 2016 rent of \$1,690.25 which consisted of the original \$1,650.00 monthly rent and a rental increase that began on June 1, 2015. The landlord has submitted a copy of the signed tenancy agreement dated February 28, 2015 and the notice of rent increase dated February 27, 2015.

The tenant disputes this claim stating that she entered into a mutual agreement to end the tenancy dated December 18, 2015 to end the tenancy on February 29, 2016. The tenant stated as a result of this she was entitled to compensation for free rent on her last month. The landlord confirmed that a mutual agreement was made, but that no compensation was offered to the tenant. The tenant stated that the new owner was her landlord from February 5, 2016 to February 29, 2016. The landlord disputes this stating that possession of the property was not given to the new owner until February 29, 2016. The tenant relies upon a copy of a letter which states in part,

According to the Residential Tenancy Act, the Tenant does not need to pay the last month's rent. Hence, there was no rent paid to the Landlord for the month of February 2016.

The tenant claims that this signed letter shows that the new owner took possession of the property on February 5, 2016 and informed her that no rent was payable for February 2016. **The tenant also provided undisputed affirmed testimony that the \$825.00 security deposit was returned on February 29, 2017 to the tenant.**

Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

In this case, both parties confirmed that no actual monies were paid for February 2016 rent. The tenant has claimed that the landlord in this application was not her landlord at the end of her tenancy stating that possession of the property was transferred on February 5, 2016 to the purchaser. The landlords have disputed this claim stating that possession was not transferred until February 29, 2016 to the purchaser. The tenant relies upon a copy of a letter which is a combination of a typed letter with handwritten notations. The wording is ambiguous as it does not literally state that the purchaser, R.Y.W. took possession of the property on February 5, 2016. The written details refer to the Landlord as a third person and not the writer of the letter. I find that neither party has submitted sufficient evidence as to determine who the legal owner of the property was for February 2016. On this basis, I find on a balance of probabilities that the tenant has failed to provide sufficient evidence that the landlords were not her landlord in this case. As such, I find that the named landlords in this application are the tenant's landlord for February 2016.

On the landlord's request for unpaid rent of \$1,730.50, I find that the landlord has established a claim based upon the undisputed affirmed evidence of both parties that no rent was paid to the landlord for February 2016.

The landlord having been successful is entitled to recovery of the \$100.00 filing fee.

~~In offsetting this claim, I authorize the landlord to retain the \$825.00 security deposit in partial satisfaction of the claim.~~

Conclusion

The landlord is granted a monetary order for ~~\$1,005.50~~ **\$1,830.50**.

This order must be served upon the tenant. Should the tenant 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 22, 2017

Residential Tenancy Branch

DECISION/ORDER AMENDED PURSUANT TO SECTION 78(1)(A)
OF THE RESIDENTIAL TENANCY ACT ON April 26, 2017
AT THE PLACES INDICATED IN **BOLD**.

Residential Tenancy Branch