



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

AMENDED DECISION

Dispute Codes: MNR MNSD MNDC FF

Introduction:

Both parties attended the hearing and gave sworn testimony. Both confirmed that the e 10 Day Notice to End Tenancy dated March 3, 2017 to be effective March 13, 2017 was served personally and the Application for Dispute Resolution was served by courier (receipt provided). I find that the tenant was legally served with the documents according to sections 88 and 89 of the Act. The landlord applies pursuant to the *Residential Tenancy Act* (the Act) for orders as follows:

- a) A monetary order pursuant to Sections 46 and 67;
- b) To retain the security deposit to offset the amount owing; and
- c) An order to recover the filing fee pursuant to Section 72.

Issue(s) to be Decided:

Is the landlord entitled to a Monetary Order for rental arrears, other costs and filing fee?

Background and Evidence:

Both parties attended and were given opportunity to be heard, to present evidence and to make submissions. The undisputed evidence is that the tenancy commenced November 17, 2015, a security deposit of \$1050 was paid and provided to the current owner by the seller and rent is currently \$2100 a month. ****The landlord notes on their Application that rent is \$2000 a month.**** The tenants vacated on March 31, 2017. Both parties agreed that the tenant paid only \$950 rent for March 2017 and told the landlord to keep and apply the security deposit to the balance. The landlord's position is that they want to claim the unpaid balance of rent for March and retain the security deposit and deal with it according to section 38 of the Act after they receive the tenant's forwarding address in writing. Both parties were advised to read section 38 of the Act and take note of the time limitations in it. The landlords said they misplaced the March cheque for \$950 and the tenant issued a replacement less the \$12 she paid for putting a stop payment on the cheque they misplaced.

The landlord also submitted other claims for the process of the Application such as her time to prepare documents, photocopying, stamps, and loss of work etc. totalling \$748.39. As explained to them in the hearing, the costs for the process of the Application and claim are limited to the recovery of the filing fee pursuant to section 72 of the Act. In evidence is the Notice to End Tenancy and proofs of service, copies of a cheque, the tenancy agreement and emails concerning cleaning and moving. On the basis of the documentary and solemnly sworn evidence presented at the hearing, a decision has been reached.

Analysis

****Although the tenancy agreement in evidence states the rent is \$2100 a month, I find the parties had reduced the rent to \$2000 a month.**** I find the tenant paid only \$950 of the \$2100 owed for March 2017 rent. I find section 21 states that a tenant must not apply the security deposit to rent unless the landlord gives written consent. I find there was no written consent from the landlord. I find the landlord entitled to recover ****\$1050**** of unpaid rent for March 2017.

As the landlord's misplaced the \$950 cheque, I find them not entitled to recover the \$12 fee withheld because it was charged to the tenant for stopping payment on it. I find the balance was replaced (\$938). As explained to the landlord in the hearing, I find section 72 limits recovery of costs for processing the Application to the \$100 filing fee. As discussed in the hearing, the landlord, after collecting the monetary order will be holding the \$1050 security deposit in trust. This must be dealt with in accordance with section 38 of the Act. The landlord declined to apply it to the monetary order today.

Conclusion:

I find the landlord is entitled to a monetary order as calculated below. I find the landlord is entitled to recover filing fees paid for this application.

Calculation of Monetary Award:

Rental Arrears March 2017	**1050.00**
Filing fee	100.00
Total Monetary Order to Landlord	**1150.00**

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*.

April 5, 2017

DECISION AMENDED PURSUANT TO
SECTION 78(1)(A) OF
THE RESIDENTIAL TENANCY ACT ON
MAY 2, 2017
AT THE PLACES INDICATED IN
****BOLD****.

Residential Tenancy Branch