Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes   OPR, MND, MNR, MNSD, MNDC, FF

Introduction

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

- an Order of Possession for unpaid rent pursuant to section 55;
- a Monetary Order for unpaid rent and damages pursuant to section 67;
- authorization to retain the security deposit 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 10 minutes. One of the landlords attended, assisted by their agent (the "landlord") who primarily gave evidence for both landlords. The landlord was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

The landlord testified that the 10 Day Notice for Unpaid Rent dated January 10, 2017 (the "10 Day Notice") was served on the same date by posting on the rental unit door. I find that the tenant was deemed served with the 10 Day Notice in accordance with sections 88 and 90 of the Act on January 13, 2017, three days after posting.

The landlord testified that the landlords' application for dispute resolution dated February 20, 2017 was sent to the tenant by registered mail on March 6, 2017. The landlord provided a Canada Post tracking number as evidence of service. I find that the tenant was deemed served with the landlords' application for dispute resolution and evidence package in accordance with sections 89 and 90 of the Act on March 11, 2017, five days after mailing.

At the outset of the hearing the landlord testified that the tenant has vacated the rental unit and withdrew the portion of the application seeking an Order of Possession.

The landlord made an application requesting to amend the monetary amount of the claim sought. The landlord indicated that the amount sought in the application was based on estimates and they now have a more accurate assessment of their loss. Pursuant to section 64(3)(c) of the *Act* and Rule 4.2 of the Rules of Procedure, as I find that it could be reasonably anticipated that the corrected total amount of damages and loss would be sought, I amend the landlords' Application to decrease the landlords' monetary claim from $4,278.00 to $3,730.85.

Issue(s) to be Decided

Are the landlords entitled to monetary compensation as claimed?
Are the landlords 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 tenancy began in December, 2013. The monthly rent is $1,209.00 payable on the first of the month. A security deposit of $587.50 was paid by the tenant at the start of the tenancy and still held by the landlords.

The landlord testified that the tenant failed to pay the monthly rent for January and February, 2017. The landlord said that the rental arrear for the tenancy is $2,418.00.

The tenant failed to participate in a move out condition inspection report at the end of the tenancy despite the landlord's multiple attempts to schedule an inspection together. The landlord submitted into written evidence copies of receipts and invoices for the cleaning and repairs undertaken after the tenant vacated the rental unit. The landlord testified that the total cost of the repairs and cleaning was $1,312.85.

Analysis

Section 67 of the *Act* allows me to issue a monetary award for loss resulting from a party violating the Act, regulations or a tenancy agreement. 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 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.

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 $1,209.00. I accept the landlord's evidence that the total amount of arrear for this tenancy is $2,418.00.

I accept the landlords' evidence that the tenant caused damage to the rental unit that required repairs and cleaning. I accept the landlord's written evidence that the the cost of the repairs and cleaning is $1,312.85. I, therefore, issue a monetary award in the landlords' favour for $3,730.85, pursuant to section 67 of the *Act*.

As the landlords' application was successful, the landlords are 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 landlords to retain the tenant's security deposit of $587.50 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 $3,143.35 under the following terms, which allows the landlords to recover unpaid rent, the damage and loss suffered and the filing fee for their application:

Item	Amount
Unpaid Rent January	$1,209.00
Unpaid Rent February	$1,209.00
Repairs and Cleaning	$1,312.85
Filing Fees	$100.00
Less Security Deposit	-$587.50
Total Monetary Order	**$3,143.35**

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*.

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Dated: April 27, 2017

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Residential Tenancy Branch