



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNR, MNDC, MNSD, FF

Introduction

This hearing dealt with the landlord's Application for Dispute Resolution seeking a monetary order.

The hearing was conducted via teleconference and was attended by the landlord.

The landlord testified the tenant was served with the notice of hearing documents and this Application for Dispute Resolution, pursuant to Section 59(3) of the *Residential Tenancy Act (Act)* personally by the landlord's mother on October 27, 2016 in accordance with Section 89.

Based on the testimony of the landlord, I find that the tenant has been sufficiently served with the documents pursuant to the *Act*.

In addition, I note that the landlord was granted a Substituted Service order on April 11, 2017 by an adjudicator from the Residential Tenancy Branch. This order allowed the landlord to serve the tenant with her evidence by email to an email address that had been used by the tenant for the duration of the tenancy and since the tenancy had ended.

The landlord testified that she received that decision on Friday, April 21, 2017 and served the tenant by email on Sunday, April 23, 2017 at 9:41 a.m. The landlord testified that she received a response from the tenant acknowledging receipt of the evidence and confirming when she would pay the landlord her next installment against the debt identified in this Application. The landlord submitted that she has received 2 payments of \$50.00 each towards some of the debt.

I note that the Substituted Service order of April 11, 2017 did not provide any direction to the landlord to provide evidence of completion of the service. However, I requested

that the landlord submit to me a copy of her email to the tenant and the tenant's response so I could confirm the service of this evidence.

This additional evidence included a copy of the tenants response to the landlord's email with her attached evidence documents that is date and time stamped as April 23, 2017 at 10:46 a.m. that states: "Hi Deanna thanks for the message do you still want me to keep sending fifty a month Pam" [reproduced as written].

I am satisfied that the tenant also received the landlord's evidence in support of her claim and as a result, I have considered all of the landlord's documentary and testimonial evidence.

Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to a monetary order for unpaid rent and lost revenue; for compensation for damage to the rental unit; for all or part of the security deposit and to recover the filing fee from the tenant for the cost of the Application for Dispute Resolution, pursuant to Sections 37, 38, 45, 67, and 72 of the *Act*

Background and Evidence

The landlord submitted into evidence the following relevant documents:

- A copy of a tenancy agreement signed by the parties on April 7, 2016 for a 1 year fixed term tenancy beginning on May 1, 2016 for a monthly rent of \$920.00 due on the 1st of each month with a \$460.00 security deposit and a \$50.00 per pet pet deposit required. The landlord submitted the tenant only paid deposits in the amount of \$370.50;
- Several photographs showing the condition of the renal unit at the start and end of the tenancy; and
- Several pages of email correspondence between the two parties for the duration of the tenancy and after the end of the tenancy.

The landlord submitted the tenant did not pay rent in full for the month of October 2016 and moved out of the rental unit by November 2016. The rent paid for the month of October was \$700.00 leaving a balance owing of \$220.00.

The landlord also submitted that they have not, at the time of the hearing re-rented the rental unit to new tenants. The landlord testified that there was so much work required to return the property to a rentable condition they had not completed all of the work.

The landlord also seeks compensation for the replacement of 2 interior doors in the amount of \$180.98 that had been damaged by the tenants' pets. The landlord seeks compensation for the repainting of a fence and an interior room, in the amount of \$300.00. The landlord acknowledged giving the tenant permission to paint the one room on the condition that it be returned to the original colour by the end of the tenancy.

The landlord seeks compensation for 8 window blinds that have either been removed or damaged in the amount of \$480.00. In addition, the landlord seeks compensation for the replacement of carpets that had been installed just prior to the start of the tenancy. The landlord submitted the carpet costs were \$797.53 and the installation estimate was \$700.00.

Analysis

To be successful in a claim for compensation for damage or loss the applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
3. The value of the damage or loss; **and**
4. Steps taken, if any, to mitigate the damage or loss.

Based on the landlord's undisputed submissions that the tenant failed to pay the full amount of rent leaving a balance of \$220.00 I am satisfied the landlord is entitled to this payment.

Section 45(2) stipulates that a tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy on a date is not earlier than one month after the date the landlord receives the notice; is not earlier than the date specified in the tenancy agreement as the end of the tenancy; and is the day before the day in the month that rent is payable under the tenancy agreement.

Section 45(3) states that if the landlord has failed to comply with a material term of the tenancy agreement and has not corrected the situation within a reasonable period after

the tenant gives written notice of the failure, the tenant may end the tenancy effective on a date that is after the date the landlord receives the notice.

A material term of a tenancy agreement is a term that is agreed by both parties is so important that the most trivial breach of that term gives the other party the right to end the tenancy, such as the payment of rent.

As there is no evidence before me that the tenant alleged the landlord was in breach of a material term of the tenancy I find the earliest, according to Section 45(2) that the tenant could have ended this tenancy was May 1, 2017. As such, I find the tenant is responsible for the payment of rent until the end of the fixed term, subject only to the landlord's obligation to mitigate any losses.

From the landlord's undisputed evidence and testimony, I find the landlord was unable to take any steps to mitigate the losses related to tenant's failure to pay rent for the remainder of the fixed term because of the condition of the rental unit and the amount of work required to get it in a condition suitable for renting out. Therefore, I find the tenant is responsible for the payment to the landlord in the amount of \$5,520.00 for lost revenue for the months of November and December 2016 and January, February, March and April 2017.

Section 37 of the *Act* states that when a tenant vacates a rental unit at the end of a tenancy the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear and give the landlord all the keys or other means of access that are in the possession or control of the tenant and that allow access to and within the residential property.

Based on the landlord's extensive photographic evidence and in the absence of anything to dispute the landlord's submissions I find the landlord has established the tenant failed to comply with the requirements set forth under Section 37 of the *Act*. As a result, I find the landlord has suffered a monetary loss and the landlord is entitled to compensation for the required repairs.

I accept the landlord's verbal and documentary submissions establishes the value of the required compensation \$2,458.51 as follows: door replacements - \$180.98; paint of the fence and one room - \$300.00; blind replacements - \$480.00; carpet replacement and installation - \$1,497.53.

Conclusion

I find the landlord is entitled to monetary compensation pursuant to Section 67 in the amount of **\$8,298.51** comprised of \$220.00 rent owed; \$5,520.00 lost revenue; \$2,458.51 repairs and the \$100.00 fee paid by the landlord for this application.

I note the landlord has acknowledged the receipt of \$100.00 from the tenant towards this debt and as a result I order the landlord's award be reduced this amount.

I order the landlord may deduct the security deposit and pet damage deposit held in the amount of \$370.50 in partial satisfaction of this claim. I grant a monetary order in the amount of **\$7,828.01**. This order must be served on the tenant. If the tenant fails to comply with this order the landlord may file the order in the Provincial Court (Small Claims) and be enforced as an order of that Court.

Further, if the landlord has received any additional payments from the tenant towards this debt I order the landlord must apply those payments in partial satisfaction of this order

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: May 4, 2017

Residential Tenancy Branch