



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MNSD, FF

Introduction

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

- a monetary order for unpaid rent, pursuant to section 67;
- authorization to retain the tenant's security deposit, pursuant to section 38; and
- authorization to recover the filing fee for this application, pursuant to section 72.

The tenant did not attend the hearing, which lasted approximately 46 minutes. The landlord attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

The landlord testified that he served the tenant with his application for dispute resolution hearing package on November 3, 2016, by way of registered mail to a forwarding address provided by the tenant on October 31, 2016. The landlord provided a copy of the letter from the tenant with the forwarding address on it. The landlord provided a Canada Post tracking number verbally during the hearing. In accordance with sections 89 and 90 of the *Act*, I find that the tenant was deemed served with the landlord's application on November 8, 2016, five days after its registered mailing, to a forwarding address provided by her to the landlord.

Issues to be Decided

Is the landlord entitled to a monetary order for unpaid rent?

Is the landlord entitled to retain the tenant's security deposit?

Is the landlord entitled to recover the filing fee for this application from the tenant?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of the landlord, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the landlord's claims and my findings are set out below.

The landlord testified regarding the following facts. This tenancy began on May 22, 2015 and ended on September 30, 2016. Monthly rent in the amount of \$1,250.00 was payable on the first day of each month. A security deposit of \$625.00 was paid by the tenant and the landlord continues to retain this deposit in full. Both parties signed a written tenancy agreement and a copy was provided for this hearing. No move-in or move-out condition inspection reports were completed for this tenancy. The landlord had written permission to keep \$50.00 from the tenant's security deposit by way of the tenant's email, dated October 27, 2016. The landlord's application was filed on October 31, 2016. The tenant provided a written forwarding address to the landlord in a letter, dated October 5, 2016, which he received on October 31, 2016. He said that the tenant falsely backdated the letter to October 5, 2016 and left it in his mailbox on October 31, 2016. He explained that he checks his mail daily and he did not receive the letter before October 31, 2016.

The landlord seeks to retain the tenant's security deposit of \$625.00 in full satisfaction of his monetary claim for \$798.52. The landlord stated that he is not looking for any amount above \$625.00, with the exception of the \$100.00 filing fee paid for this application.

The landlord claimed that he incurred damages and losses because the tenant failed to provide proper notice to vacate the rental unit. He explained that she provided notice by way of email to vacate on September 15, 2016, and then sent another email on September 11, 2016, indicating that she was leaving on September 30, 2016. He said that the tenant paid rent of \$1,250.00 for September 2016. He maintained that he was able to re-rent the unit to a new tenant on October 3, 2016, so he was not seeking any loss of rent from the tenant. The landlord seeks increased hydro electricity costs, missing cable equipment, disposal of a barbeque, and gas, mileage and work costs for having to show the rental unit to prospective tenants for re-rental.

Analysis

Pursuant to section 67 of the *Act*, when a party makes a claim for damage or loss, the burden of proof lies with the applicant to establish the claim on a balance of probabilities. In this case, to prove a loss, the landlord must satisfy the following four elements:

1. Proof that the damage or loss exists;
2. Proof that the damage or loss occurred due to the actions or neglect of the tenant in violation of the *Act*, *Regulation* or tenancy agreement;
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
4. Proof that the landlord followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

Overall, I found that the landlord was largely unprepared for this hearing. The landlord submitted a number of emails as written evidence for this hearing, yet he only referenced one of them in his submissions. The landlord also had difficulty finding the relevant emails because they were not organized by date. The landlord did not have a lot of his written evidence in front of him during the hearing and was asking me what documents I had in front of me and what they said because he did not know.

I award the landlord \$50.00 for disposing of a barbeque that the tenant left at the rental unit after vacating. The landlord claimed that his vehicle was not big enough to dispose of the tenant's barbeque himself so he had to hire someone to do it. The landlord provided an email from the tenant, showing that she authorized the landlord to retain \$50.00 from her security deposit for the above cost. The landlord also provided a receipt, dated October 1, 2016, which includes a description, amount and "paid" for the above disposal. Although email is not an acceptable method under section 88 of the *Act* to provide "written permission" to keep an amount from the security deposit, I find that the landlord was sufficiently served with it as per section 71(2)(c) of the *Act*, and I find that the parties used email as a primary form of communication, particularly after the tenancy ended.

I dismiss the landlord's claim for \$185.75 for hydro utility costs. The landlord said that the tenant overused the hydro and increased the costs during one summer of approximately four months during her tenancy. The landlord supplied one hydro bill from September 2016 in the amount of \$189.36 and another from October 2016 in the amount of \$85.72, stating that there was a big difference between both bills. He maintained that he prepaid \$64.00 per month in utilities for the tenant but her costs were above this amount. I find that the landlord did not show the exact costs he was claiming by failing to provide the relevant hydro invoices. I also find and the landlord agreed, that

water, heat and electricity costs were all included in the tenant's monthly rent, as per their written tenancy agreement, and the agreement did not indicate that if the tenant went above \$64.00 per month in hydro costs, she would have to pay the difference.

I dismiss the landlord's claim for \$210.56 for a television cable modem and "pvr" box that he said the tenant stole from the rental unit. The landlord said that he supplied the modem and pvr to the tenant when she moved in and she failed to return it when she moved out. The landlord said that the tenant advised him that she bought her own modem for the rental unit and did not steal his. The landlord said that he called the cable company and found out that the tenant never activated her own modem and that she would be required to do so if she used it. The landlord provided a cable invoice for \$188.00 indicating "unreturned equipment" on September 12, 2016. It does not state what the specific equipment was that was unreturned. The landlord also failed to show that he provided a modem and pvr to the tenant because he did not complete a move-in inspection report including this information.

I dismiss the landlord's claim for \$26.25 for the rental advertisement that he said he paid for in order to re-rent this unit. The landlord only provided a printout of a general bank account without his name on it, indicating that he made a purchase for \$26.25 with a company on September 12, 2016. The landlord failed to provide an invoice explaining what he was paying for and why he was charged the above amount or a receipt showing the amount. I find that the landlord failed part 3 of the above test.

I dismiss the landlord's claim for \$32.00 for the vehicle gas that he said he used in order to travel from his home to the rental unit in order to show it to prospective tenants. The landlord did not provide a breakdown of how many trips he made, what the mileage was for each trip, or what the cost of gas was for each trip. The landlord only provided a printout of a general bank account without his name on it, indicating that he made a purchase for \$32.00, without stating the date of purchase. The landlord also failed to provide the full gas receipt showing the amount, as only a partial copy of the top of the receipt was given. I find that the landlord failed part 3 of the above test.

I dismiss the landlord's claim for \$141.32 for taking a day off work to show the rental unit to prospective tenants. When questioned as to why he had to take a day off work to show the unit when he could have shown it while he was not working, such as on a weekend, the landlord said that his realtor was having problems with the tenant in getting permission to show it. When questioned as to whether his realtor could show it, since she was already showing it to prospective buyers since the landlord claimed it was previously for sale, the landlord said that he already had a half day off from work in the morning for a medical appointment so he decided to use the other half of the day to

show the unit. The landlord provided a pay stub from his work, indicating that he took sick time off from work and that he should be paid half of the sick time indicated on the pay stub, as compensation for showing the unit for a half day. I find that this paystub does not properly demonstrate the landlord's loss, as it indicates a sick day rather than vacation time taken to show the unit. I also find that the landlord took a sick day and got paid for it and is now attempting to recover an additional amount from the tenant on top of the sick pay. I also find that the landlord could have shown the unit on a different day besides a work day, after work on a work day, or had his realtor show it instead.

I dismiss the landlord's claim for \$152.64 for the mileage he claimed for having to show the rental unit to prospective tenants. The landlord said that he travelled 318 kilometers at a rate of \$0.48 per kilometer, as per "the federal website or the tenancy website." The landlord claimed that the roundtrip between his home and the rental unit was between 45 and 50 kilometers. The landlord submitted a photograph, which he said was of the odometer from his vehicle, showing that he travelled 318 kilometers. I notified the landlord that the photograph was insufficient evidence because it did not prove that it was his vehicle or that he travelled only to the rental unit and back home for the above mileage, rather than to other places not related to showing the rental unit.

As the landlord was mainly unsuccessful in this application, I find that he is not entitled to recover the \$100.00 filing fee paid for this application.

The landlord continues to hold the tenant's security deposit of \$625.00. No interest is payable on the deposit during the period of this tenancy. As per Residential Tenancy Policy Guideline 17, as the landlord applied to retain the tenant's security deposit, I am also required to deal with its return to the tenant. Accordingly, I order the landlord to retain \$50.00 from the tenant's security deposit in full satisfaction of the monetary award made in this decision. I order the landlord to return the remainder of the tenant's security deposit in the amount of \$575.00 to the tenant within 15 days of receiving this decision.

Conclusion

I order the landlord to retain \$50.00 from the tenant's security deposit in full satisfaction of the monetary award.

I order the landlord to return the remainder of the tenant's security deposit in the amount of \$575.00 to the tenant within 15 days of receiving this decision.

I issue a monetary order in the tenant's favour in the amount of \$575.00 against the landlord. The landlord must be served with this Order as soon as possible. Should the

landlord 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.

The remainder of the landlord's application is dismissed without leave to reapply.

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 15, 2017

Residential Tenancy Branch