



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR MNSD MNDC FF

Introduction

This hearing dealt with the applications from both the landlord and the tenants pursuant to the *Residential Tenancy Act* (the *Act*).

The landlord applied for:

- a Monetary Order pursuant to section 67 of the *Act* for unpaid rent;
- an Order to retain the security or pet deposit pursuant to section 38 of the *Act*; and
- a return of the filing fee pursuant to section 72 of the *Act*.

The tenants applied for:

- a return of the security deposit pursuant to section 72 of the *Act*.

Only the landlord attended the hearing. The landlord was given a full opportunity to be heard, to present his sworn testimony and to make submissions.

The landlord explained that copies of the Landlord's Application for Dispute Resolution (Landlord's Application) and evidentiary package were sent to the tenants individually by Canada Post Registered Mail on January 21, 2017. Tracking numbers and copies of the receipts for each package were provided to the hearing. Pursuant to sections 88, 89 & 90 of the *Act*, the tenants are deemed to have been served with these documents on January 26, 2017.

The landlord acknowledged receiving the tenants application for dispute resolution "sometime in February" by way of Canada Post Registered Mail. While the landlord could not recall, the exact date of service, the landlord acknowledged receipt of the tenants application for dispute resolution and I find the landlord to have been duly served with this document.

Issue(s) to be Decided

Can the landlord retain the tenants' security deposit? If not, should it be returned to the tenants?

Is the landlord entitled to a Monetary Order for unpaid rent?

Can the landlord recover the filing fee for this application?

Background and Evidence

Undisputed testimony provided by the landlord explained that this was a month to month tenancy that began in the middle of October 2016 and ended on January 4, 2017 when the tenants vacated the rental unit without notice. Rent was \$950.00 per month and a security deposit of \$475.00 continues to be held by the landlord.

The landlord explained that he was seeking a Monetary Order of \$1,425.00 in satisfaction for unpaid rent for January 2017, along with an application to retain the tenants' security deposit. Undisputed testimony was provided by the landlord that the tenants abandoned the rental unit on January 4, 2017 without notice. The landlord explained that he was unable to contact the tenants following their departure as they had left without leaving him a forwarding address and the phone number that he had for the tenants did not work. On January 20, 2017 he landlord applied for dispute resolution. The landlord stated that approximately 2 or 3 days after he applied for dispute resolution, he received the tenants forwarding address in writing by way of ordinary mail.

During the course of the hearing, the landlord said that he sought rent for January 2017 because he was unable to re-rent the suite following the unexpected departure of the tenants. He described how the tenants had left the suite full of debris and noted that he required several days of work to remove these items. The landlord explained that the time he spent clearing the suite prevented him from being able to re-rent the unit. As part of his evidentiary package, the landlord provided photos of the rental suite which displayed a couch, a bed, and numerous other household items that had been left in the rental unit by the tenants.

Analysis

The landlord has applied for a Monetary Order of \$1,425.00 in reflection of unpaid rent for January 2017, and to retain the tenants' security deposit.

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, the onus is on the landlord to prove his entitlement to a claim for a monetary award.

Undisputed testimony was provided to the hearing that the landlord applied for dispute resolution on January 20, 2017. The landlord stated that he was informed on January 3, 2017 that the tenants were going to be departing the rental January 4, 2017. During the course of the hearing, the landlord explained how he was unable to re-rent the suite in January 2017 due to the large amount of debris that remained in the rental unit following its unexpected abandonment by the tenants. The landlord produced photographic evidence for the hearing which displayed the items that were left in the rental unit by the tenants.

Section 7 of the *Act* explains, "If a tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying tenant must compensate the other for damage or loss that results... A landlord who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss."

Pursuant to section 45 of the *Act*, a tenant is required to provide the landlord with one month's notice of their intention to vacate a rental unit. This did not occur as the tenants abruptly left the unit on January 4, 2017 after informing the landlord the previous night of their intentions. I find that the landlord has suffered a loss as a result of this late notice and was unable to re-rent the unit due to the presence of a large amount of debris leftover by the tenants. I find that the landlord is entitled to unpaid rent for the month of January 2017.

Section 38 of the *Act* requires the landlord to either return a tenant's security deposit in full or file for dispute resolution for authorization to retain the deposit 15 days after the *later* of the end of a tenancy and, or upon receipt of the tenant's forwarding address in writing. If that does not occur, the landlord is required to pay a monetary award, pursuant to section 38(6)(b) of the *Act*, equivalent to double the value of the security deposit. However, this provision does not apply if the landlord has obtained the tenant's written authorization to retain all or a portion of the security deposit to offset damages or losses arising out of the tenancy as per section 38(4)(a). A landlord may also under section 38(3)(b), retain a tenant's security or pet deposit if an order to do so has been issued by an arbitrator.

Undisputed testimony was provided to the hearing that the landlord applied for dispute resolution on January 20, 2017. The landlord stated that he was informed on January 3, 2017 that the tenants were going to be departing the rental January 4, 2017. As this tenancy was abandoned by the tenants during the first week of January 2017 and their forwarding address was not received in writing by the landlord until approximately January 21 or 22, 2017, I find that the landlord has applied within the time limits prescribed by the *Act* to retain the tenants' security deposit. The landlord is therefore entitled to retain the tenants' security deposit.

Using the offsetting provisions contained in section 72(2)(b) the landlord may retain the tenants' security deposit against the monetary award given to him.

As the landlord was successful in his application, he may recover the \$100.00 filing fee from the tenants.

Conclusion

I issue a Monetary Order of \$575.00 in favour of the landlord as follows:

Item	Amount
Unpaid rent for January 2017	\$950.00
Recovery of Filing Fee	100.00
Less Security Deposit	(-475.00)
Total =	\$575.00

The landlord is provided with a Monetary Order in the above terms and the tenants must be served with this Order as soon as possible. Should the tenants 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*.

Dated: July 11, 2017

Residential Tenancy Branch