



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNR, MNDC, MNSD, FF

Introduction

This hearing was convened in response to an application by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. A Monetary Order for damages to the unit - Section 67;
2. A Monetary Order for unpaid rent - Section 67;
3. A Monetary Order for compensation - Section 67;
4. An Order to retain the security deposit - Section 38; and
5. An Order to recover the filing fee for this application - Section 72.

Tenant ES did not attend the hearing. I accept the Landlord's evidence that this Tenant was served with the application for dispute resolution and notice of hearing (the “Materials”) by registered mail in accordance with Section 89 of the Act. Tenant CB did attend the hearing and confirmed that Tenant ES is aware of this hearing. The Landlord and Tenant CB were each given full opportunity under oath to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Is the Landlord entitled to the monetary amounts claimed?

Is the Landlord entitled to recovery of the filing fee?

Background and Evidence

The following are undisputed facts: The tenancy started on March 1, 2016 for a fixed term to end February 28, 2017. Rent of \$1,550.00 was payable on the first day of each month. At the outset of the tenancy the Landlord collected \$775.00 as a security deposit and \$500.00 as a pet deposit. On October 12, 2016 the Landlord discovered that the rent cheques for September and October 2016 were returned N.S.F. and the unit to be empty except for some furnishings and food in the fridge. The Landlord advertised the unit at a lesser amount of rent and obtained a new tenant for November 15, 2016.

The Tenant does not dispute the costs claimed of \$5,587.41 detailed as follows:

- \$3,100.00 for unpaid September and October 2016 rent;
- \$775.00 for lost rental income for the period November 1 to 15, 2016;
- \$451.50 for junk removal;
- \$472.50 for repainting the unit;
- \$56.04 for the paint and supplies;
- \$232.37 for miscellaneous items and supplies; and
- \$500.00 for the cost of replacing baseboards.

The Parties agreed that the Tenant owes \$200.00 for cleaning as opposed to the \$400.00 claimed by the Landlord.

The Landlord states that the tenancy agreement provides for a \$50.00 fee for each returned cheque and claims \$100.00 for these costs. The Landlord claims \$300.00 for the marketing and lease costs of re-renting the unit.

Analysis

Section 7 of the Act provides that where a tenant does not comply with the Act, regulation or tenancy agreement, the tenant must compensate the landlord for damage or loss that results. Based on the agreement of the Tenant I find that the Landlord has

substantiated that the costs claimed of **\$5,587.41**. Based on the agreement of the Parties I find that the Landlord is entitled to **\$200.00** for the cleaning costs. As nothing in the tenancy agreement requires the Tenant to pay re-rental costs and as these costs are otherwise the costs of conducting the rental business, I dismiss the claim for \$300.00.

Section 7 of the Regulations provides that where provided for in the tenancy agreement, a landlord may charge an administration fee of not more than \$25 for the return of a tenant's cheque by a financial institution or for late payment of rent. Section 6(3) of the Act provides that a term of a tenancy agreement is not enforceable if the term is inconsistent with this Act or the regulations. As the tenancy agreement provides for a returned cheque fee that is not consistent with the amount allowed by the Regulations I find that this tenancy agreement term is unenforceable and I dismiss the claim for \$100.00 N.S.F. fees.

As the Landlord's application has been primarily successful I find that the Landlord is entitled to recovery of the **\$100.00** filing fee for a total entitlement of **\$5,887.41**.

Deducting the combined security and pet deposit plus zero interest of **\$1,275.00** from the entitlement leaves **\$4,612.41** owed by the Tenants to the Landlord.

Conclusion

I Order the Landlord to retain the security and pet deposit plus interest of \$1,275.00 in partial satisfaction of the claim and I grant the Landlord an order under Section 67 of the Act for the remaining amount of **\$4,612.41**. If necessary, this order may be filed in the Small Claims 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: August 29, 2017

Residential Tenancy Branch