



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MNSD, FF

Introduction

This hearing dealt with a landlord's application for compensation for unpaid and/or loss of rent and cleaning and garbage disposal cost; and, authorization to retain the tenant's security deposit. The tenant did not appear at the hearing. The landlord submitted that the tenant was served with the hearing documents by registered mail sent to the tenant's forwarding address. The landlord submitted that the registered mail was successfully delivered on May 29, 2017 and the landlord provided the registered mail tracking number as proof of service. I was satisfied the tenant was duly notified of this proceeding and I continued to hear from the landlord without the tenant present.

Issue(s) to be Decided

1. Has the landlord established an entitlement to recover unpaid and/or loss of rent from the tenant for the months of January 2017 through March 2017?
2. Has the landlord established an entitlement to recover costs to clean and dispose of garbage and abandoned possessions from the tenant?
3. Is the landlord authorized to retain the tenant's security deposit?

Background and Evidence

The one year fixed term tenancy started August 1, 2014 and continued on a month to month basis thereafter. The tenant was required to pay rent of \$800.00 on the first day of every month. The tenant paid a security deposit of \$400.00.

The tenant failed to pay rent for January 2017 and the tenant was served with a 10 Day Notice to End Tenancy for Unpaid Rent by posting on the door on January 19, 2017. The 10 Day Notice has a stated effective date of January 31, 2017. The tenant did not pay the outstanding rent or return vacant possession of the rental unit.

In late March 2017 the landlord spoke with the neighbours of the property who advised the landlord that the tenant had not been seen at the property in quite some time. The landlord entered the rental unit and determined the unit had been abandoned. The tenant had left the unit unclean along with abandoned possessions and garbage. The landlord proceeded to

change the locks to the rental unit. On April 1, 2017 the landlord proceeded to have the unit cleaned and abandoned possessions and garbage removed.

The landlord seeks to recover unpaid and/or loss of rent for the months of January 2017 through March 2017 and \$546.00 paid to have the unit cleaned and abandoned possessions and garbage removed for a total claim of \$2,946.00. The landlord submitted that the possessions taken to the dump stunk, were unhygienic and of no value. The removal of the garbage and possessions took two men five hours and a large truck.

In addition to the written details of dispute, the landlord provided a copy of the tenancy agreement and the invoice for the cleaning and garbage removal.

The landlord also referred to a previous dispute resolution proceeding (file number provided on the cover page of this decision). In that decision the tenant acknowledged that he remained in possession of the rental unit up to and including the month of March 2017 but claimed he had no abandoned his possessions.

Analysis

Under section 26 of the Act, a tenant is required to pay rent when due in accordance with their tenancy agreement. Where a tenant does not pay rent the landlord is at liberty to serve the tenant with a 10 Day Notice to End Tenancy. When a tenant receives a 10 Day Notice the tenant has five days to pay the outstanding rent to nullify the Notice or the tenant has five days to dispute the Notice by filing an Application for Dispute Resolution. If a tenant does not pay the outstanding rent or dispute the Notice within five days then, pursuant to section 46(5) of the Act, the tenant is conclusively presumed to have accepted the tenancy will end and must vacate the rental unit by the effective date of the Notice.

I accept the evidence before me that the landlord served the tenant with a 10 Day Notice by posting the Notice on the rental unit door on January 19, 2017. Since the tenant did not pay the outstanding rent or file to dispute the 10 Day Notice, I find the tenancy ended pursuant to the 10 Day Notice and the tenant was required to vacate the rental unit pursuant to the 10 Day Notice. Yet, the tenant did not and remained in possession of the rental unit until March 2017 according to both parties. Therefore, I grant the landlord's request to recover unpaid and/or loss of rent from the tenant for the months of January 2017 through March 2017.

Section 57 of the Act provides for what happens when a tenant does not vacate a rental unit by the end of the tenancy. As provided under section 57(2) of the Act, a landlord must not take possession of the unit without a Writ of Possession. This includes changing the locks to prevent the tenant from accessing the rental unit. The landlord made no submission indicating he had a Writ of Possession. Rather, he relies upon abandonment as the authority to change the locks and take possession of the rental unit. However, as seen in the previous dispute resolution proceeding decision, the tenant had taken the position he had not abandoned the unit and there

were possessions of value that he retrieved from the landlord, including a television and furniture after the landlord took possession of the unit. Where a landlord asserts abandonment as a basis for taking possession of the rental unit, the landlord must be prepared to provide evidence in support of that position. Based on the evidence before me, I find the landlord's position regarding abandonment questionable and I am not satisfied that the tenant had abandoned the rental unit when the landlord took possession of the rental unit. Therefore, I do not compensate the landlord to clean the rental unit and dispose of the tenant's belongings as taking possession of the unit prematurely would interfere with the tenant's ability to do so.

I award the landlord recovery of the filing fee paid for this application, in the amount of \$100.00, as it is clear to me that the landlord was entitled to recover unpaid rent from the tenant as claimed.

I authorize the landlord to retain the tenant's security deposit of \$400.00 in partial satisfaction of the amounts awarded to the landlord with this decision.

In light of all of the above, the landlord is provided a Monetary Order in the net amount calculated below to serve and enforce upon the tenant:

Unpaid rent – January and February 2017	\$1,600.00
Loss of rent – March 2017	800.00
Filing fee	100.00
Less: security deposit	<u>(400.00)</u>
Monetary Order	\$2,100.00

Conclusion

The landlord has been authorized to retain the tenant's security deposit and has been provided a Monetary Order for the balance of \$2,100.00 to serve and enforce upon the tenant.

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 11, 2017

Residential Tenancy Branch