



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNR, MNSD, MNDC, FF

Introduction

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

- a monetary order for compensation for unpaid rent, damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit and pet damage deposit in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover the filing fee for this application from the tenants pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

As both parties were in attendance I confirmed that there were no issues with service. The tenant confirmed receipt of the landlord's application for dispute resolution and evidence package. The landlord confirmed receipt of the tenants' evidence. In accordance with sections 88 and 89 of the *Act*, I find that the tenants were duly served with copies of the landlord's application and evidence and the landlord with the tenant's evidence.

At the outset of the hearing, the landlord made an application requesting to amend the monetary amount of the claim sought. The landlord said that they wished to lower the monetary claim to \$2,600.00, the equivalent of the security deposit and pet damage deposit held for this tenancy, as they had not incurred the amount of losses they initially believed. Pursuant to section 64(3)(c) of the *Act* and Rule 4.2 of the Rules of Procedure, as I find that it is reasonably foreseeable that a monetary claim would be reduced if the amount of damages are found to be less, I amend the landlord's Application to decrease the landlord's monetary claim from \$15,000.00 to \$2,600.00.

Issue(s) to be Decided

Is the landlord entitled to a monetary order as claimed?

Is the landlord entitled to retain all or a portion of the security deposit and pet damage deposit for this tenancy?

Is the landlord entitled to recover the filing fee of this application from the tenants?

Background and Evidence

This periodic tenancy began in May, 2012. The monthly rent at the end of the tenancy was \$2,875.00. A security deposit of \$1,300.00 and a pet damage deposit of \$1,300.00 were paid at the start of the tenancy and are still held by the landlord. A condition inspection report was prepared by the parties at the start of the tenancy. While the parties participated in a move-out inspection on March 7, 2017 the tenants disagreed with the assessment of damages and did not sign the report.

The landlords discussed the possibility of the tenancy ending with the tenants in January, 2017. The landlord gave evidence that no notice to end tenancy was issued. The tenants gave evidence that there was no mutual agreement to end the tenancy.

The tenants gave notice to the landlord that they were terminating the tenancy on February 20, 2017. The tenants vacated the rental unit on March 10, 2017. No rent was paid for the month of March.

Analysis

A tenant must pay rent when it is due, whether or not the landlord complies with the *Act*, regulations or tenancy agreement pursuant to section 26(1) of the *Act*. Section 45 of the *Act* explains that a tenant may end a periodic tenancy by giving the landlord notice on a date not earlier than one month after the date the landlord receives the notice.

I find that, as the tenants gave notice of their intention to end the tenancy on February 20, 2017 the effective date of the end of tenancy was March 31, 2017. I find that the tenants were obligated to pay the monthly rent in the amount of \$2,875.00 on March 1, 2017. I accept the evidence of the parties that the tenants failed to pay the full rent on that date.

I accept the evidence of the parties that there was no prior agreement to end the tenancy. I accept the evidence that while the landlord had discussed with the tenants the possibility of ending the tenancy, no notice had been issued.

Section 67 of the *Act* states, if damage or loss results from a party not complying with this Act, the regulations or a *tenancy agreement*, the director may determine the amount of, and order that party to pay, compensation to the other party. I find that a violation of the tenancy agreement occurred by the tenants who failed to pay the full rent owing on March 1, 2017. Therefore, the landlord is entitled to a monetary award in the amount of \$2,875.00, the equivalent of one month's rent. As the landlord amended their claim to seek only the amount of \$2,600.00 I issue a monetary award in that amount.

In accordance with sections 38 and the offsetting provisions of 72 of the *Act*, I allow the landlord to retain the tenants' \$1,300.00 security deposit and \$1,300.00 pet damage deposit in satisfaction of the monetary award issued in the landlord's favour.

While the landlord's application was successful and the landlord is entitled to recover the \$100.00 filing fee for this application from the tenants, the landlord has testified that they are only seeking to retain the security deposit and pet damage deposit for this tenancy. Accordingly, I will not issue a monetary award for recovery of filing fees.

Conclusion

The landlord is authorized to retain the \$1,300.00 security deposit and \$1,300.00 pet damage deposit for this tenancy.

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 22, 2017

Residential Tenancy Branch