



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding WESTWYND REALTY
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes: MNR OPR MNDC MNSD FF

Introduction:

Only the landlord attended the hearing and gave sworn testimony. He stated that the Application for Dispute Resolution was served personally to a room mate of the tenant who was residing with her at 10:30a.m. on June 29, 2017. I find that the tenant was legally served with the documents according to sections 88 and 89 of the Act. The landlord applies pursuant to the *Residential Tenancy Act* (the Act) for orders as follows:

- a) A monetary order pursuant to Sections 7, 46 and 67 for unpaid rent and damages;
- b) An Order of Possession pursuant to Sections 44(1) (c), and 55; and
- d) An order to recover the filing fee pursuant to Section 72.

Issue(s) to be Decided:

Is the landlord entitled to an Order of Possession and a Monetary Order for rental arrears, damages and filing fee?

Background and Evidence:

Only the landlord attended although the tenant was served with the Notice of Hearing. The landlord was given opportunity to be heard, to present evidence and to make submissions. The undisputed evidence is that the tenancy commenced March 1, 2017 on a fixed term lease to February 28, 2018, a security deposit of \$800 was paid and rent is \$1600 a month. The landlord said the tenancy was with two girls but they had a significant disagreement and one was charged with assault. Due to these circumstances, the landlord signed a Mutual Agreement to End Tenancy with them on June 13, 2017 but one girl continued residing in the unit. Then she vacated on or before July 1, 2017 without informing them. They found an unknown male living in the unit on July 10, 2017 but he left when requested. As a result, they no longer require an Order of Possession.

Rent was paid for June 2017. The girls had various subsidies that were withdrawn but one paid \$475 for July rent. The landlord diligently tried to mitigate their damages and was able to re-rent the unit for the last week of July. They ask for the remaining unpaid rent in the amount of \$783 for July 2017. (\$1600-\$475 paid-\$367 rent for last week).

The landlord discussed liquidated damages but said they were waiving these. They found a significant amount of damage totalling over \$2,000 but they had been so busy re-renting the unit that they had not sent any evidence of the damage claim. They said they prefer to keep the security deposit in trust until they receive the tenant's forwarding address in writing. We discussed section 38 of the Act and the requirement to act within 15 days once a forwarding address is received in writing.

On the basis of the documentary and solemnly sworn evidence presented at the hearing, a decision has been reached.

Analysis

I find an Order of Possession is no longer required.

Monetary Order

I find that there are rental arrears of \$783 for July 2017 as an agency paid \$475 of the \$1600 rent for July and the landlord collected \$367 rent from a new tenant for the last week of July.

I find awards for compensation are provided in sections 7 and 67 of the *Act*.

Accordingly, an applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

As explained to the landlord in the hearing, I found they had submitted insufficient evidence to support a claim for damages. I recognize they had the priority of re-renting and I give them leave to reapply for damages observing the criteria for evidence as noted above.

Conclusion:

I find the landlord is entitled to a monetary order as calculated below. The security deposit will remain in trust. I find the landlord is entitled to recover filing fees paid for this application. I give the landlord leave to reapply for damages.

Calculation of Monetary Award:

Rental Arrears July 2017	783.00
Filing fee	100.00
Total Monetary Order to Landlord	883.00

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: September 06, 2017

Residential Tenancy Branch