



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

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

The Landlord and Tenant were each given full opportunity under oath to be heard, to present evidence and to make submissions. The Witness provided evidence under oath.

Issue(s) to be Decided

Is the Landlord entitled to the unpaid rent and damages claimed?

Is the Landlord entitled to recovery of the filing fee?

Is the Tenant entitled to double the security deposit?

Background and Evidence

The tenancy started on November 1, 2015. Rent of \$3,000.00 was payable on the first day of each month. At the outset of the tenancy the Landlord collected \$1,500.00 as

security deposit. No move-in or move-out inspections were offered by the Landlord and none were conducted.

The Landlord states that it has no idea when the Tenant moved out of the unit and that the keys were returned on April 3 or 4, 2017. The Landlord states that she lives out of province and had a friend (the "Witness") assist her with the tenancy on occasion, such as providing the key to the Tenant at the outset of the tenancy. The Landlord states that it communicated with the Tenant through texts and that it's mailing address was provided to the Tenant on June 15, 2016. The Landlord provides a copy of this text in another language and it is noted that the only copy of a text that contains an address is not dated or translated. The Landlord states that on February 11, 2017 the Tenant gave notice by text to move out on February 15, 2017. The Landlord states that the Tenant changed this date many times in subsequent texts. The Landlord states that it understands that the Tenant helped with the subsequent rental of the unit by advertising the unit at some point. The Landlord states that she only became involved after April 4, 2017 when she obtained a property manager to handle the rental of the unit. The Landlord states that it does not know when the unit was again advertised. The Landlord states that the property manager was retained on or about May 9, 2017 and that the unit was advertised by the property manager for \$3,300.00 per month rent. The Landlord states that a new tenant was obtained for a tenancy start date of August 1, 2017. The Landlord states that the Tenant did not pay rent for December 2016 and January, February, March, or April 2017. The Landlord claims rent for these months and for May 2017.

The Landlord states that she received the Tenant's forwarding address on April 20, 2017 and that it did not make an application to claim against the security deposit until May 24, 2017 as they were in the process of attempting to negotiate a settlement with the Tenant. The Tenant states that the forwarding address was provided on February 27, 2017. The Tenant provides copy of the text providing the forwarding address. The Tenant does not dispute unpaid rent for December 2016 and January and February

2017 in the amount of \$9,000.00. The Tenant also does not dispute the Landlord's claim for \$157.50 as the cost of removing furniture that the Tenant submits was inadvertently left behind.

The Tenant states that on January 25, 2017 she gave notice by text to end the tenancy for the end of February 2017. The Tenant provides a copy of this text and states that both the Landlord and the Witness confirmed receipt of this text. The Tenant notes that the Landlord omitted this text from all the other texts provided as evidence by the Landlord for this hearing. The Tenant states that she moved out of the unit on February 25, 2017. The Tenant states that the unit, including the carpets was cleaned the same day. The Tenant also provides a copy of a text dated February 11, 2017 indicating that the Tenant will live in the unit until around February 15 but will pay full rent for February 2017. The Tenant states that on February 27, 2017 she contacted the Landlord about the keys to the unit and that the Landlord told the Tenant to contact the Witness to pick up the keys. The Tenant states that the Witness was asked multiple times to collect the keys but did not. The Tenant states that after she moved out of the unit she painted the unit at the request of the Witness. The Tenant states that she finished painting the unit at the beginning of March 2017 and notified the Witness around March 15 or 16, 2017 that the painting was completed.

The Landlord states that the on March 2 and March 5, 2017 the Tenant told the Landlord that she was not finished cleaning the unit. The Landlord states that the Tenant did inform the Landlord at the end of March 2017 that the keys would be returned. The Landlord states that she did not see the text from January 25, 2017. The Tenant states that the cleaning referred to in texts sent after the end of February 2017 was in relation to the clean up after the painting.

The Landlord states that a glass door was missing at the end of the tenancy and claims \$514.50 for its replacement. The Landlord provides a receipt for this claim. The Tenant states that the glass door was neither damaged nor missing at the end of the tenancy.

The Tenant provides a letter from the Tenant's movers in relation the state of the unit at move-out.

The Witness states that she sometimes helped the Landlord with her property and property issues and did communicate with the Tenant about paying rent and about the return of the keys to the unit. The Witness states that she did ask the Tenant to paint the unit. The Witness also states that she did not specifically ask for the unit to be painted but did ask the Tenant to leave it in very good condition and in the same condition as it was received including the paint. The Witness states that she did ask the Tenant to return the keys after all the jobs were done such as the cleaning. The Witness states that she did tell the Tenant that her job was to ensure the cleaning including painting. The Witness also states that the painting was not requested and that the Tenant just agreed to paint the unit. The Witness states that she had required the return of the keys in March 2017 and told the Tenant that the keys could be returned any time before or after the week of March 20 to 25, 2017. The Witness states that she obtained the keys on April 3, 2017. The Witness states that she saw the unit between April 4 and 8, 2017 and that the Tenant had not cleaned anything, including the carpets. The Witness states that she took photos of the unit. The Landlord provided these photos as evidence. The Witness states that she found the glass door missing and contacted the Tenant who said she would repair the door. The Witness states that the Tenant later attacked the Witness and accused the Witness of breaking the door.

The Landlord states that they incurred costs for a title search to obtain evidence of the correct spelling of the Tenant's name. The Landlord claims this cost of \$11.03.

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. This section further provides that where a landlord or tenant claims compensation for damage or loss that results from the other's non-compliance with this

Act, the regulations or their tenancy agreement the claiming party must do whatever is reasonable to minimize the damage or loss. Given the Tenant's receipts and invoices for the cleaning and moving I find on a balance of probabilities that the Tenant moved her belongings out of the unit by February 25, 2017. Given the Witness's equivocation in relation to the painting of the unit I find that the Witness evidence in relation to the painting of the unit is not reliable. I therefore prefer the Tenant's evidence and find on a balance of probabilities that the Tenant was asked to paint the unit. Given the lack of any evidence that the walls were stained or otherwise damaged by the Tenant I find that the painting of the unit was for the benefit of the Landlord and that the retention of the keys or access to the unit by the Tenant over March 2017 was not for the Tenant's use or occupation of the rental unit. Given the text evidence and considering the evidence that the Parties communicated almost entirely through text, I find that the Tenant provided its notice in writing in January 2017 to end the tenancy at the end of February 2017. For these reasons I find that the Tenant is not responsible for any rent payable after February 28, 2017. Even if the Tenant did not provide sufficient notice to end the tenancy, given that the Landlord did nothing to rent the unit until May 2017 and as the Landlord advertised the unit at a higher rental amount than was being claimed against the Tenant I find that the Landlord failed to take any reasonable steps to mitigate the losses claimed. I therefore dismiss the Landlord's claim for unpaid rent or lost rental income for the months of March, April and May 2017.

Section 21 of the Residential Tenancy Branch Regulations provides that a duly completed inspection report is evidence of the condition of the rental property, unless either the landlord or tenant has a preponderance of evidence to the contrary. Given the lack of a move-out inspection report indicating damage to the unit, considering that the photos provided by the Landlord do not include a photo of any damaged glass door or of an area that depicts a missing door, and given the Tenant's equally plausible oral evidence that no door was removed or damaged by the Tenant, I find on a balance of probabilities that the Tenant did not cause the damage claimed to the door and I dismiss the claim for the door.

Nothing in the Act provides for compensation for a party's costs to collect evidence for the dispute proceedings. I therefore dismiss the claim for the title search costs.

As the Tenant has not disputed unpaid rent for December 2016, January and February 2017 and for the costs of removing the furniture I find that the Landlord has substantiated its claim for **\$9,000.00** in unpaid rent and **\$157.50** for furniture removal. As the Landlord's application has met with some success I find that the Landlord is entitled to recovery of the **\$100.00** filing fee for a total entitlement of **\$9,257.50**.

Section 38 of the Act provides that within 15 days after the later of the date the tenancy ends, and the date the landlord receives the tenant's forwarding address in writing, the landlord must repay the security deposit or make an application for dispute resolution claiming against the security deposit. Where a landlord fails to comply with this section, the landlord must pay the tenant double the amount of the security deposit. Policy Guideline #17 provides as follows:

If a landlord does not return the security deposit or apply for dispute resolution to retain the security deposit within the time required, and subsequently applies for dispute resolution in respect of monetary claims arising out of the tenancy, any monetary amount awarded will be set off against double the amount of the deposit plus interest.

Based on the Landlord's evidence that it received the Tenant's forwarding address on April 20, 2017 I find that the Landlord had until May 5, 2017 to either return the security deposit or make an application to claim against the security deposit. As the Landlord did neither I find that the Landlord must now pay the Tenant double the security deposit plus zero interest in the amount of **\$3,000.00**.

Deducting the Tenant's entitlement of **\$3,000.00** from the Landlord's entitlement of **\$9,257.50** leaves **\$6,256.50** owed to the Landlord.

Conclusion

I grant the Landlord an order under Section 67 of the Act for **\$6,256.50**. 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: October 27, 2017

Residential Tenancy Branch