



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MNDC, MNSD, FF

Introduction

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

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

Both parties attended the hearing via conference call and provided undisputed affirmed testimony. The landlord provided affirmed testimony that the tenants were served with the notice of hearing package via Canada Post Registered Mail on February 19, 2017 and have provided a copy of the Canada Post Customer Receipt Tracking number as confirmation. The tenant confirmed receipt of the landlord's notice of hearing package. I accept the undisputed affirmed evidence of the landlord and find that the tenants have been properly served with the notice of hearing package as per sections 88 and 89 of the Act via Canada Post Registered Mail on February 19, 2017.

At the outset, the landlord provided affirmed testimony that the tenant was served with the submitted documentary evidence by placing it in the tenants' mailbox on June 30 and again on July 10, 2017. The tenants stated that she did not receive them as of March 24, 2017 the tenants have since moved to a new location without advising the Residential Tenancy Branch of the Landlord. The tenants also stated that the Residential Tenancy Branch does not have jurisdiction in this matter and argues that the named Landlord is in fact not the landlord in this case. The tenant has stated that a late evidence package was submitted to the Residential Tenancy Branch. A review of the file shows that as of the date of this hearing no such documentary evidence has been processed.

I find as such that an adjournment is necessary and prudent in the circumstances to allow for the review of the tenants documentary evidence regarding jurisdiction and to allow the landlord an opportunity to serve the tenants with the submitted documentary evidence. The mailing address provided by the tenants as their new location was confirmed with both parties. As such, the Residential Tenancy Branch File shall be updated. The dispute resolution hearing is adjourned.

Both parties were cautioned that no new evidence shall be submitted or accepted regarding the landlord's monetary claim. An exception for both parties is the tenants late evidence regarding the Residential Tenancy Branch's jurisdiction in this matter and the landlord's response to rebut the tenants' claim.

On October 26, 2017 the hearing was reconvened with the landlord via conference call. The tenant did not attend. This matter was set for a conference call hearing at 9:00 a.m. on this date. I waited until 11 minutes past the start of the scheduled hearing time in order to enable both parties to connect with this teleconference hearing. As a result the hearing proceeded in the absence of the tenants. At the end of the hearing after waiting 38 minutes for the tenant to attend, the tenant's argument on jurisdiction was considered abandoned.

The landlord provided undisputed testimony that the landlord's entire evidence package was served to the tenant via Canada Post Registered Mail on July 27, 2017 as per the submitted copy of the Canada Post Customer Receipt. As such, I find that the tenant has been properly served as per sections 88 and 89 of the Act to the new address provided for by the tenant.

Issue(s) to be Decided

Is the landlord entitled to a monetary order for unpaid rent, for money owed or compensation for damage or loss and recovery of the filing fee?

Is the landlord entitled to retain all or part of the security deposit?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

This tenancy began on February 10, 2017 on a fixed term tenancy ending on February 10, 2018 and then thereafter on a month-to-month basis as shown by the submitted copy of the signed tenancy agreement. The monthly rent was \$2,400.00 payable on the 1st day of each month. A security deposit of \$1,200.00 and a pet damage deposit of

\$600.00 were paid on February 10, 2017. A condition inspection report for the move-in was completed with both parties on February 10, 2017.

The landlord clarified that he now seeks an amended monetary claim of \$2,300.00 which consists of:

\$1,628.00	Loss of Rental Income, Pro-rated at \$85.68/day for 19 days
\$100.00	Recovery of Filing Fee
\$50.00	Recovery of Registered Mail Fees (\$25.00X2)
\$22.00	Cost of Re-Keying Lock
\$500.00	Compensation, Landlord's time to re-rent

The landlord claims that the tenants entered into a tenancy agreement on February 6, 2017 to begin the tenancy on February 10, 2017. The landlord provided undisputed evidence that the tenants gave notice to end the tenancy on February 6, 2017. The landlord stated that upon being notified he began advertising the rental unit to be re-rented. The landlord provided undisputed affirmed testimony that a new tenant was not found to begin a new tenancy until 19 days later to begin on February 20, 2017. As such the landlord seeks compensation for the loss of rental income for the 19 day period at \$85.07/day totalling, \$1,628.00.

The landlord seeks recovery of \$50.00 for the cost of Canada Post Registered Mail Fees for delivering the landlord's application and evidence packages.

The landlord seeks compensation for recovery of \$22.00 for re-keying the locks. The landlord claims that all of the keys were returned by the tenants, but feels that the manner in which the keys were returned by the tenants were suspicious.

The landlord seeks compensation of \$500.00 for his time in re-renting the unit. The landlord stated that he had to advertise the unit online and show the unit to prospective tenants. The landlord stated that the monetary claim was an arbitrary amount based upon what he feels his time is worth based upon his occupation's salary.

Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has

been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

In this case, I accept the undisputed evidence of the landlord and find that the tenants entered into a signed tenancy agreement on February 6, 2017 to begin on February 10, 2017. I also accept that the landlord received the tenant's 1 month notice to end the tenancy on February 6, 2017 and that he immediately began trying to re-rent the unit. I find based upon the landlord's undisputed evidence that the landlord tried to mitigate any possible losses by re-advertising the unit for rent immediately upon being notified, but was not successful until February 20, 2017. I find based upon the landlord's calculations of a pro-rated rent of \$85.68/day that the landlord has established a claim for the loss of rental income totaling, \$1,628.00.

On the landlord's claim for recovery of registered mail fees for delivery of the application for dispute and the submission of evidence, Section 72 of the Act addresses **Director's orders: fees and monetary order**. With the exception of the filing fee for an application for dispute resolution, the Act does not provide for the award of costs associated with litigation to either party to a dispute. Accordingly, the Landlord's claim for recovery of litigation costs (mailing fees) is dismissed.

On the landlord's claim for recovery of re-keying a lock cost of \$22.00, I find that landlord has failed. The landlord stated that the tenants returned all of the keys to the rental unit, but because of the circumstances, the landlord was suspicious and re-keyed the locks. I find in the circumstances that the landlord has failed to provide sufficient details of why he feels this way or how it is the responsibility of the tenants to pay this cost. In any event, Residential Tenancy Branch Policy Guideline #7, Locks and Access states in part,

¹
The Act allows the tenant to request that the locks be changed at the beginning of a new tenancy. **The landlord is responsible for re-keying or otherwise changing the locks so that the keys issued to previous tenants do not give access to the rental unit.** The landlord is required to pay for any costs associated with changing the locks in this circumstance.

As such, the landlord's claim for recovery of costs for re-keying the lock is dismissed.

The landlord's claim for compensation of \$500.00 for the landlord's time and efforts for re-renting the unit is dismissed. The landlord has failed to provide sufficient evidence to show that any expenses were incurred in re-renting the unit or how the amount of \$500.00 could be quantified. The landlord's monetary claim in this circumstance was an arbitrary amount without sufficient details of justification.

The landlord has established a total monetary claim of \$1,628.00 for the loss of rental income.

The landlord having been successful in his application is entitled to recovery of the \$100.00 filing fee. I authorize the landlord to retain the \$1,200.00 security deposit in partial satisfaction of this claim.

Conclusion

The landlord is granted a monetary order for \$528.00.

This order must be served upon the tenants. Should the tenants fail to comply with this order, the order may be filed in the Small Claims Division of the Provincial 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 26, 2017

Residential Tenancy Branch