



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND MNR FF O

Introduction

This hearing dealt with an Application for Dispute Resolution under the *Residential Tenancy Act* (the “Act”) by the landlords for a monetary order for unpaid rent or utilities, for damages to the unit, sit or property, to recover the cost of the filing fee and “other” which the landlord describes as only wanting to keep the tenant’s security deposit.

Landlord L.R. (the “landlord”), a support person for the landlord and the tenant attended the teleconference hearing and the landlord and tenant gave affirmed testimony. During the hearing the parties were given the opportunity to provide their evidence orally. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

Neither party raised any concerns regarding the service of documentary evidence. Both parties confirmed having the opportunity to review the documentary evidence prior to the hearing.

Preliminary and Procedural Matter

Although the hearing lasted a total of 27 minutes, I note that the tenant disconnected from the hearing after I had rendered my decision at the 22 minutes point of the hearing and the tenant failed to call back into the hearing. The landlord had additional questions that were answered before the hearing ended at 27 minutes.

Issues to be Decided

- Is the entitled to a monetary order under the *Act*, and if so, in what amount?
- Is the landlord entitled to recover the cost of the filing fee under the *Act*?

Background and Evidence

A copy of the tenancy agreement was submitted in evidence. A fixed term tenancy agreement began on December 1, 2016 and was scheduled to end on May 31, 2017 with the tenant to provide vacant possession to the landlord on May 31, 2017. Monthly rent in the amount of

\$800.00 was due on the first day of each month. The tenant paid a security deposit of \$400.00 which the landlord continues to hold, and the tenant also paid a pet damage deposit of \$200.00 which the parties agreed has already been returned to the tenant the night the tenant vacated the rental unit on May 8, 2017.

As a result, I will not be addressing the pet damage deposit in this decision as it has already been confirmed as returned to the tenant.

Although the landlord listed a total of \$662.13 in costs associated with their claim, the landlord testified that the landlord was not seeking the full amount and simply wanted authorization to retain the tenant's security deposit of \$400.00 plus the recovery of the cost of the filing fee.

The landlord began by stating that the tenant vacated the rental unit on May 8, 2017 and the landlord stated that the tenant only paid \$400.00 of the \$800.00 May rent leaving an unpaid rent balance of \$400.00 owing for the May 2017. The tenant claims he had to move however the tenant was a fixed term tenancy and under section 45(2) of the *Act* the earliest the tenant could have vacated without owing May 2017 rent would be May 31, 2017. As a result, I find it was not necessary to consider any further testimony from the parties as there was no documentary evidence to support that the tenant had any right under the *Act* to withhold \$400.00 for May 2017 rent. The landlord testified that they did not agree to waive \$400.00 for May 2017 rent.

Analysis

Based on the documentary evidence and the testimony of the parties provided during the hearing, and on the balance of probabilities, I find the following.

Test for damages or loss

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. 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 what was reasonable to minimize the damage or loss.

Monetary claim – There is no dispute that May 2017 rent was not paid in full and that the tenant only paid \$400.00 of the \$800.00 May 2017 rent before vacating the rental unit on May 8, 2017. The tenancy was a fixed term tenancy however which did not expire until May 31, 2017. Section 45(2) of the *Act* applies and states:

45 (2) A tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that

(a) is not earlier than one month after the date the landlord receives the notice,

(b) is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and

(c) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

(3) If a landlord has failed to comply with a material term of the tenancy agreement or, in relation to an assisted or supported living tenancy, of the service agreement, and has not corrected the situation within a reasonable period after the tenant gives written notice of the failure, the tenant may end the tenancy effective on a date that is after the date the landlord receives the notice.

(4) A notice to end a tenancy given under this section must comply with section 52 *[form and content of notice to end tenancy]*.

[My emphasis added]

The parties confirmed that there was no agreement in writing to end the fixed term tenancy and the landlord confirmed that they did not waive the \$400.00 unpaid portion of May 2017 rent. The landlords have applied for unpaid rent in their application. Given the above, I find the tenant was unable to end a fixed term tenancy before May 31, 2017 as there was not mutual agreement in writing to end the tenancy earlier.

Given the above, I find the tenant breached section 45(2) by failing to end the tenancy in a manner permitted under the *Act* and that the landlord could not comply with section 7 to minimize their loss as the tenant left near the midway point of the month of May 2017. Therefore I find the landlord has met the burden of proof and that the tenant owes \$400.00 for the unpaid portion of May 2017 rent. Given the above, I authorize the landlord to retain the tenant's full security deposit of **\$400.00** which includes no interest in full satisfaction of the loss of the unpaid portion of May 2017 rent.

As the landlords have succeeded with their application, I grant the landlords the recovery of the **\$100.00** filing fee.

Monetary Order – The landlords have established a total monetary claim of **\$500.00** comprised of \$400.00 for the unpaid portion of May 2017 rent plus the recovery of the cost of the filing fee of \$100.00. I grant the landlords a monetary order pursuant to section 67 of the *Act*, in the amount of **\$100.00** in addition to the landlord being authorized to retain the tenant's full security deposit of \$400.00 described above.

I do not find it necessary to consider the remain of the landlord's claim as the landlord was only seeking \$400.00 in this application plus the \$100.00 filing fee and is fully successful without only considering the unpaid rent and filing fee.

Conclusion

The landlord's application is successful.

The landlords have been granted a monetary order pursuant to section 67 of the *Act*, in the amount of **\$100.00** and have been authorized to retain the tenant's full security deposit of \$400.00. Should the tenant fail to pay the \$100.00 amount, this order must be served on the tenant and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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 2, 2017

Residential Tenancy Branch