



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR MNSD

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* ("the Act") for a monetary order for unpaid rent pursuant to section 67 and authorization to retain the tenant's security deposit in satisfaction of the monetary order requested pursuant to section 38.

The tenant/respondent did not attend this hearing, although I waited until 11:13 am in order to enable the tenant to connect with this teleconference hearing scheduled for 11:00 am. The landlord/applicant attended the hearing and was given a full opportunity to be heard, to present sworn testimony, and to make submissions.

The landlord testified that he served the tenant with his Application for Dispute Resolution package by registered mail. He also testified that the original hearing date set for this matter was re-scheduled to September 14, 2017. He testified that he was told that the Residential Tenancy Branch would provide the tenant with a copy of the re-scheduled hearing date. I confirm that the Residential Tenancy Branch sent materials informing the tenant/respondent of the new hearing date as of September 12, 2017. I accept the landlord's evidence (Canada Post receipts with the tracking information) that he re-sent his materials by registered mail on September 13, 2017. Therefore, I find the tenant deemed served with the landlord's Application for Dispute Resolution and the correct Notice of Hearing on September 18, 2017 (5 days after the landlord's 2nd registered mailing).

Issue(s) to be Decided

Is the landlord entitled to a monetary order for unpaid rent? Is the landlord entitled to retain the security deposit? Is the landlord entitled to recover his filing fee?

Background and Evidence

The landlord submitted a copy of the written residential tenancy agreement as evidence for this hearing. He testified that this tenancy began on August 20, 2017 as a month to month tenancy with a rental amount of \$400.00. The landlord continues to hold a \$200.00 security deposit paid by the tenant at the outset of the tenancy. The landlord testified that the tenant no longer resides in the rental unit. The landlord sought a monetary amount of \$1200.00 and recovery of his filing fee from the tenant.

The landlord testified that he had numerous issues with the behaviour of this tenant and the tenant's interaction with the landlord resulted in criminal charges as well as an order that the tenant not have contact with the landlord. He supplied a copy of the paperwork as evidence in this hearing. The landlord also testified that after the tenant failed to pay rent due July 1, 2017 the landlord issued a 10 Day Notice to End Tenancy for Unpaid Rent.

The landlord testified that the tenant was arrested at the rental premises. He testified that the tenant has not returned to the property. He testified that the tenant's brother contacted the landlord to arrange to remove the tenant's belongings and end the tenancy formally. The tenant's brother attended to the residence and, with the authorization of the tenant removed the tenant's belongings from the residence on or about August 27, 2017. The landlord testified that, after the tenant's belongings were removed from the unit, he posted advertisements online and through local rental agencies. He testified that he posted the unit for rent prior to September 1, 2017. He testified that he re-rented the unit for October 1, 2017.

The landlord sought to recover the unpaid rent from July 2017 as well as the rental loss he incurred for the months of August 2017 and September 2017. The landlord testified that he was unable to advertise to re-rent the unit prior to the removal of the tenant's belongings and the notice, through the tenant's brother, that the tenant would not return to the rental unit. As the monthly rent was \$400.00 each month, the landlord sought \$1200.00 for the three months that he was not paid rent or he incurred rental loss. The landlord provided sworn undisputed testimony that the tenant was not in custody for the months of August and September 2017. The landlord testified that he was released from custody after his arrest in July 2017 and resides at his mother's home.

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.

I find that the landlord has provided proof, in both his testimony and his accompanying documentary evidence that the tenant did not pay rent in July 2017 and therefore the landlord is entitled to recover \$400.00 for July rent.

I find that the landlord has provided sufficient proof to show that he was not in a position to re-rent the unit in August 2017 in that the tenant had not fully vacated the rental unit until August 27, 2017, according to the landlord's undisputed testimony and records. Therefore, the landlord is entitled to recover \$400.00 for August rent from the tenant.

I find that the landlord provided sufficient evidence to show, on a balance of probabilities that, while he made substantial efforts (with advertising and contact with resources) to attempt to re-rent the unit, he was unable to do so until October 1, 2017. Therefore, the landlord is entitled to recover \$400.00 for September rental loss from the tenant.

I find that the landlord is entitled to \$1200.00 (\$400.00 x 3) in unpaid rent and rental loss from the tenant. The landlord has proven his loss and he has proven that the loss stemmed from a violation of the tenancy agreement (including but not limited to lack of sufficient notice) by the tenant.

As the landlord continues to hold the tenant's \$200.00 security deposit, the landlord is entitled to retain the \$200.00 deposit in partial satisfaction of the monetary amount he is entitled to.

As the landlord was successful in his application, I find that the landlord is entitled to recover the \$100.00 filing fee from the tenant.

Conclusion

I issue the landlord a monetary order as follows,

Item	Amount
Unpaid Rent – July 2017	\$400.00
Unpaid Rent – August 2017	400.00
Rental Loss – September 2017	400.00
Less Security Deposit	-200.00
Recovery of Filing Fee for this Application	100.00
Total Monetary Order to the Landlord	\$1100.00

The landlord is provided with this Order in the above terms and the tenant must be served with this Order as soon as possible. Should the tenant fail to comply with this Order, this 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 6, 2017

Residential Tenancy Branch