



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 by way of conference call concerning an application made by the landlord seeking a monetary order for unpaid rent or utilities; a monetary order for damage to the unit, site or property; a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; for an order permitting the landlord to keep all or part of the pet damage deposit or security deposit; and to recover the filing fee from the tenant for the cost of the application.

The landlord attended the hearing with another person to assist. However, the line remained open while the phone system was monitored for 10 minutes prior to hearing any testimony and no one for the tenant joined the call. The landlord testified that the tenant was served with the Landlord Application for Dispute Resolution and notice of this hearing by registered mail on June 2, 2017 and has provided a copy of a Canada Post cash register receipt bearing that date and a Registered Domestic Customer Receipt addressed to the tenant, and I am satisfied that the tenant has been served in accordance with the *Residential Tenancy Act*.

The landlord gave affirmed testimony, and all evidence provided has been reviewed and is considered in this Decision.

Issue(s) to be Decided

- Has the landlord established a monetary claim as against the tenant for unpaid rent?
- Has the landlord established a monetary claim as against the tenant for damage to the unit, site or property?
- Has the landlord established a monetary claim as against the tenant for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and more specifically for loss of rental revenue?
- Should the landlord be permitted to keep all or part of the security deposit in full or partial satisfaction of the claim?

Background and Evidence

The landlord testified that this month-to-month tenancy began on April 17, 2016 and ended on January 27 or 28, 2017. Rent in the amount of \$1,600.00 per month was payable on the 1st day

of each month, and the landlord collected a pro-rated amount of rent for the first partial month. At the outset of the tenancy the landlord collected a security deposit in the amount of \$800.00 which is still held in trust by the landlord, and no pet damage deposit was collected. The rental unit is a suite within the landlord's home, and the landlord also resides in the rental building. A copy of the tenancy agreement has been provided as evidence for this hearing.

The landlord further testified that the tenant moved out of the rental unit without sufficient notice to the landlord. The tenant sent the landlord a text message on January 15, 2017 saying he found another rental unit and would be moving out on February 1, 2017. The landlord claims \$1,600.00 for February's rent.

The landlord received the tenant's forwarding address in a text message on February 2, 2017. Then the tenant gave the landlord another address by telephone on May 11, 2017.

The landlord has provided a Monetary Order Worksheet setting out the following claims:

- \$271.16 for laminate flooring;
- \$12.62 for the cost of obtaining photographs for this hearing;
- \$1,600.00 for labor to install the laminate flooring and other repairs;
- \$1,600.00 for unpaid rent for February;
- \$1,600.00 for loss of rental revenue for March, 2017.

The landlord's total claim is \$5,083.78, plus recovery of the \$100.00 filing fee, and receipts for the flooring and the photographs have been provided as evidence for this hearing. Also provided is an estimate for labor to repair to laminate flooring, painting 2 walls patched with a different color, filling, sanding and hauling away waste for \$1,600.00, and a confirmed receipt for that amount once the work was completed.

The landlord advertised the rental unit on Craigslist in February or April, but had to make the repairs first. The tenant had left dishes in the dishwasher, damaged blinds, and the tenant had painted using a different color of paint. The rental unit was re-rented for May 1, 2017.

The landlord testified that the flooring was new at the beginning of the tenancy, although no move-in or move-out condition inspection reports were completed by the parties. Everything including appliances was new. Also provided are photographs which were taken after the tenant moved out, except for 2 that were taken before this tenancy began.

The tenant has not served the landlord with an application for dispute resolution claiming the security deposit.

The landlord had filed for Arbitration prior to this application and a hearing was held on April 13, 2017. The Arbitrator dismissed the landlord's application with leave to reapply, and this is the re-application. The landlord also claims the \$100.00 filing fee for the previous application.

Analysis

I explained to the landlord the legal principle of res judicata which is a doctrine that prevents rehearing of claims and issues arising from the same cause of action between the same parties, after a final judgment was previously issued on the merits of the case. I indicated that I would be reviewing the previous Decision to ensure that I did not make a finding on a matter that had already been heard and decided upon. I have read the Decision, and the landlord's application was dismissed with leave to reapply for failing to prove service upon the tenant in accordance with the *Residential Tenancy Act*, except that the claim for recovery of the \$100.00 filing fee was dismissed without leave to reapply. Therefore, I decline to order that the landlord recover it now.

I accept the undisputed testimony of the landlord that the tenant moved out of the rental unit without giving sufficient notice, and the landlord has established a claim for unpaid rent in the amount of \$1,600.00 for February, 2017.

The landlord also claims loss of rental revenue for March, 2017 and damages to the rental unit. In order to be successful in a claim for damage or loss, the onus is on the landlord to satisfy the 4-part test:

1. that the damage or loss exists;
2. that the damage or loss exists as a result of the tenant's failure to comply with the *Act* or the tenancy agreement;
3. the amount of such damage or loss; and
4. what efforts the landlord made to mitigate any damage or loss suffered.

I have reviewed the photographs provided by the landlord, which also show food left in the fridge. The *Residential Tenancy Act* specifies that move-in and move-out condition inspection reports are evidence of the condition of the rental unit at the beginning and end of the tenancy, which is why the reports are so important to the parties. However, a tenant is required to leave a rental unit reasonably clean and undamaged at the end of a tenancy except for normal wear and tear.

The landlord testified that the laminate flooring was new at the beginning of the tenancy, which lasted less than a year. I also accept the undisputed testimony of the landlord that the tenant caused other damages, including painting with a different color, and the landlord has established the claims of \$271.16 for the cost of purchasing the laminate and \$1,600.00 for installing and other repairs.

With respect to loss of rental revenue, the landlord was unable to say when the Craigslist advertisement was placed, and I am not satisfied that the landlord has established element 4 in the test for damages.

The *Residential Tenancy Act* provides for recovery of a filing fee but not for costs associated with preparing for a hearing, and I dismiss the landlord's \$12.62 claim for photographs. However, since the landlord has been partially successful with the application the landlord is also entitled to recovery of the \$100.00 filing fee.

Having found that the landlord has established a claim of \$1,600.00 for unpaid rent, \$271.16 for laminate, \$1,600.00 for repairs, and \$100.00 as recovery of the filing fee, I hereby order the landlord to keep the \$800.00 security deposit in partial satisfaction, and I grant a monetary order in favour of the landlord for the difference in the amount of \$2,771.16.

Conclusion

For the reasons set out above, I hereby order the landlord to keep the \$800.00 security deposit in partial satisfaction of the claim, and I grant a monetary order in favour of the landlord as against the tenant pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$2,771.16.

This order is final and binding and may be enforced.

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: November 16, 2017

Residential Tenancy Branch