



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MNR, 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 tenant's 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 tenant pursuant to section 72.

The landlord attended the hearing via conference call and provided affirmed testimony. The tenants did not attend or submit any documentary evidence. The landlord states that the tenants were served with the notice of hearing package via Canada Post Registered Mail. The landlord has provided the returned envelope from Canada Post which states that the package was "unclaimed". I accept the undisputed affirmed testimony of the landlord and find that the tenants were properly served. Although the tenants failed to claim the package, the tenants are deemed served as per section 90 of the Act.

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 March 10, 2017 on fixed term tenancy ending on October 1, 2017 and then thereafter on a month-to-month basis as shown by the submitted copy of the signed tenancy agreement dated March 9, 2017. The monthly rent was \$1,825.00 payable on the 1st day of each month. A security deposit of \$850.00 was paid on March 10, 2017.

The landlord seeks a monetary claim of \$2,800.00 which consists of:

\$1,825.00 Unpaid Rent, May 2017

The landlord clarified that he was seeking a monetary claim of \$2,800.00 for recovery of:

\$1,825.00 Unpaid Rent, May 2017
\$1,825.00 Unpaid Rent/Loss of Rental Income, June 2017
-\$850.00 Held Security Deposit
\$2,800.00

The landlord stated that the tenants were served with a 10 Day Notice dated May 5, 2017 on May 5, 2017 by posting it to the rental unit door. The 10 Day Notice sets out that the tenants failed to pay rent of \$1,700.00 that was due on May 1, 2017 and \$125.00 in Utilities following a written demand to do so on May 1, 2017.

The landlord provided undisputed evidence that the tenants vacated the rental premises on May 15, 2017 in compliance with the 10 Day Notice. The landlord clarified that the 10 Day Notice was not accurate as rent is \$1,825.00 and that an effective end of tenancy date was not provided on the 10 Day Notice.

Analysis

Pursuant to section 46 of the Act, a landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end tenancy effective on a date that is not earlier than ten days after the date the tenant receives the notice.

However, section 52 of the Act states,

52 In order to be effective, a notice to end tenancy must be in writing and must...

- (a) be signed and dated by the landlord or tenant giving the notice,
- (b) give the address of the rental unit,
- (c) **state the effective date of the notice**,
- (d) except for a notice under section 45(1) or (2) [tenant's notice], state the grounds for ending the tenancy, and
- (e) when given by a landlord, be in the approved form.

I find based upon the evidence of the landlord that the 10 Day Notice dated May 5, 2016 is ineffective. The landlord failed to provide an effective end of tenancy date and I note that rent is \$1,825.00 and not \$1,700.00 as noted on the 10 Day Notice. The landlord also relies upon submitted text messages from the landlord to the tenant regarding the payment of rent. Based upon these factors, I find that the landlord has failed to provide sufficient evidence of unpaid rent.

Conclusion

The landlord's application for a monetary order is dismissed.

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: January 25, 2018

Residential Tenancy Branch