



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPN, MNSD, FF

Introduction

This hearing was convened in response to an application by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. An Order of Possession - Section 55;
2. An Order to retain the security deposit - Section 38; and
3. An Order to recover the filing fee for this application - Section 72.

The Landlord and Tenant were each given full opportunity under oath to be heard, to present evidence and to make submissions.

Preliminary Matters

The Parties confirmed during the hearing that the tenancy ended some time ago. I therefore dismiss the claim for an order of possession.

The Landlord’s application sets out a total monetary claim for \$1,200.00. The Landlord separately provided a monetary order worksheet claiming \$12,600.00. The Landlord did not make an amendment to increase the total monetary claim set out in the application.

Rule 2.2 of the Residential Tenancy Branch Rules of Procedure provides that a claim is limited to what is stated in the application. As the Landlord did not amend the application to increase the total monetary claim I restrict the Landlord’s claim to the amount set out in the application and dismiss the Landlord’s claim for the larger amount as set out in the worksheet.

Issue(s) to be Decided

Is the Landlord entitled to retain the security deposit?

Is the Landlord entitled to recovery of the filing fee?

Background and Evidence

The tenancy started on May 18, 2017 for a fixed term to end May 17, 2018. Rent of \$1,200.00 was payable on the 15th day of each month. At the outset of the tenancy the Landlord collected \$1,200.00 as a security deposit. The tenancy ended on July 1, 2017. The Landlord received the Tenant's forwarding address on July 5, 2017.

The Landlord states that the Tenant only gave two days' notice before moving out of the unit on July 1, 2017. The Tenant states that the Landlord was given 5 days' notice prior to moving out on July 1, 2017. The Tenant's submissions indicate that rent was paid to July 1, 2017.

The Landlord states that on July 1, 2017 the unit was advertised online for the same rental amount and that the unit was rented at this rate on September 15, 2017. The Landlord states that the unit did not rent quickly due to a slow market and that he only got two applications from prospective renters. The Landlord states that the house containing the unit was also listed for sale sometime in June or July 2017 but has not sold to date. The Landlord states that the tenancy that started in September 2017 is currently continuing. The Landlord claims \$1,200.00.

The Tenant submits that the unit was found to be cold and damp and states that they had to move out of the unit as it contained lots of issues and was dangerous. The Tenant provides a medical note from a physician dated June 23, 2017 that indicates that the Tenant "has an area of dermatitis on his low back, which appeared recently and is likely from some environmental factors."

Analysis

Section 32(1) of the Act provides that a landlord must provide and maintain residential property in a state of decoration and repair that, inter alia, makes it suitable for occupation by a tenant. Section 26(1) of the Act provides that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement. Section 7 of the Act provides that where a tenant does not comply with the Act, regulation or tenancy agreement, the tenant must compensate the landlord for damage or loss that results. This section further provides that where a landlord or tenant claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement the claiming party must do whatever is reasonable to minimize the damage or loss.

As the Tenant agreed to a fixed term tenancy the Tenant could not end the tenancy prior to the end of the fixed term and was therefore liable to pay rent to the end of the fixed term regardless of the Landlord's failure to provide a unit that was warm and dry. The Tenant's remedy for the Landlord's failure would have been to seek an order for repairs. Even if the cold and damp caused the dermatitis, there is no evidence that the unit was uninhabitable and I note that the medical note does not indicate that the rental unit contained the environmental factors that may have caused the dermatitis. Given the undisputed evidence of the amount of rent payable and the Landlord's evidence of mitigation I find that the Tenants breached the tenancy agreement and by this breach caused a rental loss to the Landlord in an amount greater than \$1,200.00. Given the Landlord's undisputed evidence of immediately advertising the unit at the same rental rate I find that the Landlord took reasonable steps to mitigate the rental losses caused by the Tenant. I find therefore that the Landlord is entitled to the claimed amount of **\$1,200.00** and I order the Tenant to pay this amount to the Landlord.

Section 19 of the Act provides that a landlord must not require or accept either a security deposit or a pet damage deposit that is greater than the equivalent of 1/2 of one month's rent payable under the tenancy agreement. Section 72(2) of the Act provides that if a party is ordered to pay any amount to the other, the amount may be deducted, in the case of payment from a landlord to a tenant, from any rent due to the landlord, and in the case of payment from a tenant to a landlord, from any security deposit or pet damage deposit due to the tenant. As the rent was \$1,200.00 I find that the Landlord was only able to collect \$600.00 as a security deposit. However as the Tenant has been ordered to pay \$1,200.00 to the Landlord for unpaid rent I decline to order the return of the overpaid security deposit amount of \$600.00 and instead set off the entire **\$1,200.00** security deposit plus zero interest against the **\$1,200.00** owed to the Landlord in full satisfaction of the Landlord's rental entitlement. As the Landlord breached the Act in collecting a greater security deposit than allowed I decline to award recovery of the \$100.00 filing fee.

Conclusion

I Order the Landlord to retain the security deposit plus interest of \$1,200.00 in full satisfaction of the claim. 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 03, 2018

Residential Tenancy Branch