



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNR, MNSD, FF

Introduction

This hearing dealt with a landlords' application for a Monetary Order for unpaid rent and damage to the rental unit; and, authorization to retain the security deposit. Both parties appeared or were represented at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

At the outset of the hearing I confirmed service of hearing documents and evidence upon each other and the Residential Tenancy Branch. I confirmed that the tenant had not served or submitted a written response or evidence in response to the claims against her. The tenant indicated she intended to make her position orally during the hearing. The tenant also indicated that she intended to file an Application for Dispute Resolution against the landlords but that she has not yet done so. I informed the parties that this decision pertains to the landlords' claims against the tenant only and that the tenant remains at liberty to file her own Application for Dispute Resolution against the landlords within the time limits provided under the Act.

Issue(s) to be Decided

1. Have the landlords established an entitlement to receive compensation from the tenant in the amounts claimed?
2. Are the landlords authorized to retain the tenant's security deposit?

Background and Evidence

The tenancy started on May 1, 2015 on a month to month basis. The landlords' collected a security deposit of \$600.00. Pursuant to a Notice of Rent Increase the rent increased to \$1,244.40 starting March 1, 2017. The tenancy ended in August 2017 and

the landlords refunded \$250.56 of the security deposit to the tenant. The landlords continue to hold the balance of the security deposit.

By way of this application, the landlords seek to recover unpaid rent of \$1,244.40 from the tenant for the month of August 2017. It was undisputed that the tenant did not pay rent for August 2017 and on August 10, 2017 the landlords served a 10 Day Notice to End Tenancy for Unpaid Rent indicating rent of \$1,244.40 was outstanding as of August 1, 2017. The tenant did not pay the outstanding rent but vacated the rental unit on August 15, 2017 and notified the landlords of this on August 16, 2017.

The tenant explained that she withheld rent because there had been outstanding repair issues since April 2017. The tenant acknowledged that she did not have the landlord's consent or authorization from an Arbitrator to withhold rent due to the repair issues. Accordingly, I informed the parties that the tenant did not have a legal right under the Act to withhold rent and that if she suffered a loss of use and enjoyment she may pursue such a claim by filing her Application for Dispute Resolution. Accordingly, I did not seek a response from the landlords with respect to the allegations concerning outstanding repair issues.

The landlords also seek to recover compensation of \$349.44 to replace the door on the cottage, which formed part of the rented premises, since it was damaged during the tenancy. The tenant acknowledged responsibility for this damage and was agreeable to compensating the landlords the amount claimed.

Analysis

Section 26 of the Act provides that a tenant must pay rent when due in accordance with their tenancy agreement, even if the landlord has violated the Act, regulations or tenancy agreement, unless the tenant has a legal right under the Act to withhold rent payable. The Act provides very limited and specific circumstances where a tenant may legally withhold or make deductions from rent payable.

Having outstanding repair issues is not a legal basis to withhold rent. If a tenant has outstanding repair issues and seeks to reduce rent payable the tenant's recourse is to obtain the landlord's consent to do so and failing that the tenant may file an Application for Dispute Resolution and obtain authorization from an Arbitrator to do so. The tenant did not have the landlord's consent or the authorization from an Arbitrator to withhold rent. Therefore, I find the tenant did not have a legal basis to withhold rent from the

landlords for the month of August 2017 and I grant the landlords' request to recover \$1,244.40 from the tenant for unpaid rent for the month of August 2017.

Section 37 of the Act provides that a tenant must leave the rental unit undamaged at the end of the tenancy. The parties were in agreement that the door to the cottage on the property, which formed part of the rented premises, was damaged at the end of the tenancy. Given the tenant's agreement to compensate the landlord's the amount claimed for this damage, I grant the landlord's request to recover \$349.44 to rectify this damage.

I further award the landlords recovery of the \$100.00 filing fee paid for this application.

I authorize the landlords to retain the balance of the tenant's security deposit that they continue to hold in partial satisfaction of the amounts awarded to the landlords with this decision.

In light of the above, I provide the landlords with a Monetary Order to serve and enforce upon the tenant, calculated as follows:

| | |
|--|-----------------|
| Unpaid rent – August 2017 | \$1,244.40 |
| Damage to door | 394.44 |
| Filing fee | 100.00 |
| Less: security deposit retained by landlords | <u>(349.44)</u> |
| Monetary Order for landlords | \$1,344.40 |

Conclusion

The landlords are authorized to retain the balance of the tenant's security deposit and have been provided a Monetary Order for the balance owing of \$1,344.40 to serve and enforce upon the tenant.

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: February 28, 2018

Residential Tenancy Branch