



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: FF MNR MND 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;
- 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;
- and a monetary order for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67; and
- authorization to recover the filing fee for this application, pursuant to section 72

While the landlord's agent, DM, attended the hearing by way of conference call, the tenant did not. I waited until 2:17 p.m. to enable the tenant to participate in this scheduled hearing for 2:00 p.m. The landlord's agent was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

Rule 7.3 of the Rules of Procedure provides as follows:

7.3 Consequences of not attending the hearing

If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply.

The landlord's agent testified that the tenant was served with the landlord's application and evidence for dispute resolution hearing package on August 2, 2017, by way of registered mail. The landlord provided a Canada Post tracking number in their evidence package. In accordance with sections 88, 89 and 90 of the *Act*, I find that the tenant was deemed served with the landlord's application and evidence on August 7, 2017, five

days after its registered mailing. The tenant did not submit any evidence for this hearing.

Issue(s) to be Decided

Is the landlord entitled to monetary compensation for unpaid rent and damage?

Is the landlord entitled to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary award requested?

Is the landlord entitled to recover the filing fee for this application from the tenant?

Background and Evidence

The landlord's agent provided the following undisputed testimony as the tenant did not attend the hearing. This fixed term tenancy began on January 30, 2016 with monthly rent in the amount of \$2,000.00 payable on the first day of each month. The landlord collected, and still holds, a security deposit and pet damage deposit in the amount of \$1,000.00 each deposit. On August 1, 2017 the tenant sent a text message to the landlord stating that she had moved out. The landlord was unable to access the unit as the tenant had changed the locks.

A move-out inspection was scheduled for July 31, 2017, but the tenant failed to attend. The landlord testified that the tenant's July 2017 rent cheque was returned as non-sufficient funds, and the tenant owes \$2,000.00 in outstanding rent.

The landlord made a further monetary claim for \$400.00 for damaged outdoor cushions, which the landlord testified were soiled. The landlord's agent could not testify to the age of the cushions.

The landlord also submitted a \$1,000.00 claim for yard and exterior work as the lawn had not been mowed, or weeded. The landlord submitted a "yard maintenance addendum" which reads that "the tenant who lives in a single-family dwelling is responsible for routine yard maintenance, which includes cutting the grass...the tenant is also responsible for weeding the flower beds...if the grass and weeds grow higher than 4"(inches); the landlord, after delivering a warning letter, will hire a garden maintenance service company to complete the maintenance with the cost being added to the next months' rent as hereby agreed by the tenant". The landlord did not submit any warning letters or invoices in their evidence in support of this portion of their claim.

Analysis

Section 26 of the Act, in part, states as follows:

Rules about payment and non-payment of rent

26 (1) *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, unless the tenant has a right under this Act to deduct all or a portion of the rent.*

The landlord's agent provided undisputed evidence that the tenant failed to pay the outstanding rent in the amount of \$2,000.00. Therefore, I find that the landlord is entitled to \$2,000.00 in outstanding rent for this tenancy.

When making a claim for damages under a tenancy agreement or the *Act*, the party making the claim has the burden of proving their claim. Proving a claim in damages includes establishing that damage or loss occurred; establishing that the damage or loss was the result of a breach of the tenancy agreement or *Act*; establishing the amount of the loss or damage; and establishing that the party claiming damages took reasonable steps to mitigate their loss.

Section 37(2)(a) of the *Act* stipulates that when a tenant vacates a rental unit the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.

The landlord submitted a monetary claim in the amount of \$400.00 for soiled outdoor cushions. The landlord's agent could not testify to the age of the cushions, nor did they provide sufficient evidence to demonstrate that the tenants had soiled these cushions during this tenancy. On this basis, I dismiss this portion of the landlord's monetary claim.

The landlord also submitted a monetary claim in the amount of \$1,000.00 for yardwork. The landlord included an addendum which outlined the tenant's obligations for yardwork and weeding. I find that the landlord did not provide a copy of any warning letters or invoices as referred to in the addendum, nor did the landlord provide evidence to support that the tenants had allowed the grass and weeds to grow longer than 4 inches. In the absence of sufficient supporting evidence to demonstrate that the tenant failed in her obligations under the tenancy agreement and *Act*, I dismiss this portion of the landlord's monetary claim.

The landlord continues to hold the tenant's security deposit and pet damage deposits of \$1,000.00 each. In accordance with the offsetting provisions of section 72 of the *Act*, I

order the landlord to retain the tenant's security deposit and pet damage deposits in partial satisfaction of the monetary claim.

As the landlord was successful in their application, I find that they are entitled to recover the filing fee for this application.

Conclusion

I issue a \$100.00 Monetary Order in favour of the landlord under the following terms, which allows the landlord to recover unpaid rent, plus the filing fee, and also allows the landlord to retain the tenant's security and pet damage deposits:

Item	Amount
Unpaid Rent for July 2017	\$2,000.00
Less Security and Pet Damage Deposit	-2,000.00
Recovery of Filing Fee for this Application	100.00
Total Monetary Order	\$100.00

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.

The remainder of the landlord's monetary claim is dismissed without leave to reapply.

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: March 23, 2018

Residential Tenancy Branch