



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNDC, FF

Introduction

This hearing dealt with the landlord's application pursuant to the Residential Tenancy Act (the "Act") for:

- a monetary award for damages and loss pursuant to section 67; and
- authorization to recover the filing fee for the application from the tenant pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The landlord spoke through his interpreter. The tenant spoke for herself assisted by counsel.

As both parties were present service of documents was confirmed. The tenant confirmed receipt of the landlord's application for dispute resolution and evidence. The landlord confirmed receipt of the tenant's evidentiary materials. I find that the parties were each served with the respective materials in accordance with sections 88 and 89 of the *Act*.

Issue(s) to be Decided

Is the landlord entitled to a monetary award as claimed?

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

Background and Evidence

The parties agreed on the following facts. This tenancy began in October, 2014 and ended in August, 2017. The monthly rent was \$850.00 payable on the first of each month. A security deposit of \$425.00 was paid at the start of the tenancy and is still held by the landlord. The parties did not prepare a condition inspection report at either the start or end of the tenancy.

The landlord seeks a monetary award of \$1,625.00 comprised of one month's rent of \$850.00 and \$775.00 for various cleaning and repairs. The landlord testified that the

tenant did not provide proper notice to end the tenancy and are seeking the rent for September, 2017. The landlord submits that the rental unit was left in a state of disrepair and the landlord incurred costs for cleaning, painting, repairs and replacing the locks. The landlord testified that after the tenant vacated the rental unit they were able to find a new tenant who began their tenancy in the middle of September, 2017.

The tenant submits that she moved out in August, 2017 as the landlord was harassing her and had verbally indicated that he would be evicting her. The tenant denies that she caused damage to the rental unit.

Analysis

Section 67 of the *Act* allows me to issue a monetary award for loss resulting from a party violating the *Act*, regulations or a tenancy agreement. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. The claimant also has a duty to take reasonable steps to mitigate their loss.

Section 7 of the *Act* explains, "If a tenant does not comply with this *Act*, the regulations or their tenancy agreement, the non-complying tenant must compensate the other for damage or loss that results... A landlord who claims compensation for damage or loss that results from the other's non-compliance with this *Act*, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss."

This issue is expanded upon in *Residential Tenancy Policy Guideline #5* which explains that, "Where the tenant gives written notice that complies with the Legislation but specifies a time that is earlier than that permitted by the tenancy agreement, the landlord is not required to rent the rental unit or site for the earlier date. The landlord must make reasonable efforts to find a new tenant to move in on the date following the date that the notice takes legal effect." In this case, the evidence provided is that the tenant informed the landlord in August, 2017 of their intention to end the tenancy. The landlord gave evidence that a new tenant was found and a new tenancy began in mid-September, 2017.

Based on the evidence submitted I find that the landlord took steps to mitigate their losses. I accept the landlord's evidence that while a new tenant was found they suffered some losses as the tenancy did not begin at the start of the month. I find that

as the new tenancy began in September, 2017 the landlord is entitled to a monetary award in the amount of \$425.00 half one month's rent.

I find that there is insufficient evidence in support of the landlord's application for damages and losses. In the absence of a condition inspection report prepared at the start of the tenancy there is little evidence that the state of the rental unit is the result of the tenant's actions or negligence. I find that the photographic evidence submitted by the parties to be of little weight. Similarly, I do not find the correspondence between the parties to be persuasive. I find that the landlord has not met their onus to show on a balance of probabilities that there has been damage and loss as a result of the tenant's violation of the Act, regulations and tenancy agreement. Consequently, I dismiss this portion of the landlord's application.

As the landlord's application was not wholly successful I decline to issue an order allowing the landlord to recover the filing fee for this application.

In accordance with sections 38 and the offsetting provisions of 72 of the *Act*, I allow the landlord to retain the tenant's \$425.00 security deposit in satisfaction of the monetary award issued in the landlord's favour.

Conclusion

The landlord is authorized to retain the tenant's security deposit in full satisfaction of the monetary award of \$425.00.

The balance of the landlord's application 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 20, 2018

Residential Tenancy Branch