



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND MNSD FF SS

Introduction

This hearing dealt with the landlords' application pursuant to the *Residential Tenancy Act* ("Act"):

- a Monetary Order for unpaid rent and damages pursuant to section 67;
- authorization to retain the security deposit and pet damage deposit in partial satisfaction of their monetary award pursuant to section 38;
- authorization to serve documents or evidence in a different way than required by the *Act* pursuant to section 71; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The tenant did not attend this teleconference hearing, which lasted approximately 15 minutes. The line remained open throughout the hearing. The landlord KS attended, confirmed she represented both co-landlords and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

The landlord testified that the landlord's application for dispute resolution dated August 30, 2017 was sent to the tenant at the service address they provided on the tenancy agreement by registered mail on September 7, 2017. The landlord provided a Canada Post tracking number as evidence of service. In addition, the landlord testified that she personally served the tenant at his place of business in mid-September. The landlord said that the service of the application for dispute resolution and evidence package was witnessed by the tenant's employer and co-workers.

While the landlord has applied for authorization to serve documents in a different way than required by the *Act*, based on the landlord's testimony I find that the tenant was served personally in accordance with sections 88 and 89 of the *Act*. I further find that based on the documentary evidence and the testimony of the landlord, in accordance

with section 71(2)(c) of the *Act*, the tenant was sufficiently served with the application for dispute resolution and evidence.

At the outset of the hearing, the landlord made an application requesting to amend the monetary amount of the claim sought. The landlord testified that they had failed to include the full rental arrears in their calculation of the monetary award sought. The landlord testified that the total arrears for this tenancy as at the date of the hearing is \$1,600.00. Pursuant to section 64(3)(c) of the *Act* and Rule 4.2 of the Rules of Procedure, as including the full arrears is reasonably foreseeable and not prejudicial to the tenant, I amend the landlords' Application to increase the landlords' monetary claim from \$7,143.47 to \$8,743.47.

Issue(s) to be Decided

Are the landlords entitled to a monetary award as claimed?

Should the landlords be authorized to serve documents in a manner other than required by the *Act*?

Are the landlords entitled to recover the filing fee for this application from the tenant?

Background and Evidence

The landlord provided undisputed evidence regarding the following facts. This periodic tenancy began in February, 2017. The monthly rent was \$800.00 payable on the first of each month. A security deposit of \$400.00 and pet damage deposit of \$400.00 was collected at the start of the tenancy and is still held by the landlord.

The tenant failed to pay the rent for June and July, 2017. When the landlord attended at the rental building to investigate they discovered that the unit was damaged and the tenant had abandoned the property. The rental building had major damages including broken windows, damage to the carpeting and floors, holes in walls, broken doors and general disrepair. The landlord testified that they incurred costs for cleaning and repairs. The landlord said that they incurred costs for traveling to the rental unit, hiring professional contractors and cleaners and dumping garbage left in the rental unit.

The landlord submitted receipts and invoices in support of their monetary claim. The landlord said that the cost of repairs, cleaning and labor is \$7,043.47.

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.

The landlord provided undisputed evidence at this hearing as the tenant failed to attend despite being served with the Notice of Hearing. I accept the landlord's evidence that the tenant failed to pay rent for the months of June and July, 2017 and the arrears for this tenancy is \$1,600.00.

I find that all of the costs the landlord claims arose due to the tenant's actions and are reasonable under the circumstances. The landlord testified that they attempted to mitigate their losses by reviewing estimates for repairs and choosing reasonable options when available. I accept the landlord's undisputed evidence that the tenant caused damage to the rental building and the cost of repairs and cleaning is \$7,043.47.

Based on the foregoing I issue a monetary award in the landlords' favour in the amount of \$8,643.47, pursuant to section 67 of the *Act*.

As the landlords' application was successful, the landlord is entitled to recover the \$100.00 filing fee for the cost of 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 security deposit of \$400.00 and pet damage deposit of \$400.00 in partial satisfaction of the monetary award issued in the landlords' favour.

Conclusion

I issue a monetary order in the landlords' favour in the amount of \$7,943.47 under the following terms, which allows the landlords to recover unpaid rent, the damage and loss suffered and the filing fee for their application:

| Item | Amount |
|-----------------------------|-------------------|
| Unpaid Rent June, 2017 | \$800.00 |
| Unpaid Rent July, 2017 | \$800.00 |
| Repairs and Cleaning | \$7,043.47 |
| Filing Fees | \$100.00 |
| Less Security Deposit | -\$800.00 |
| Total Monetary Order | \$7,943.47 |

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.

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 21, 2018

Residential Tenancy Branch