



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRL-S, MNDCL-S

Introduction

This is an Application for Dispute Resolution (the “Application”) brought by the Landlord requesting a monetary order for cleaning, rent and damages, and to retain the security deposit.

The Landlord appeared for the scheduled hearing, but no one appeared on behalf of the Tenant on the scheduled date of June 15th, nor the reconvened date of June 20th, 2018. I left the telephone conference line open for 10 minutes past the scheduled hearing time and confirmed that the Landlord and I were the only people on the call. The Landlord provided information to confirm that the notice of hearing had been served by registered mail on December 21, 2017 and picked up upon delivery.

The Landlord explained that there was a previous decision rendered on June 14, 2017 which addressed all of the issues in this current Application. The concern was that the final Order had the Tenant’s first and last name reversed and it needed to be reversed; the Landlord admitted that this was her error in her original application. As the original decision and Order is deemed to be null and void, a new Application had to be filed and a new hearing convened to review the merits of the claim.

Although all evidence was taken into consideration at the hearing, only that which was relevant to the issues is considered and discussed in this decision.

Issues to be Decided

Is the Landlord entitled to a monetary order for rent arrears/rent revenue losses and other damages, pursuant to section 67 of the *Residential Tenancy Act* (“Act”)?

Is the Landlord entitled to retain the security deposit in partial satisfaction of the monetary award, pursuant to section 38 of the Act?

Background and Evidence

The Landlord testified that the tenancy began July 1, 2016 for a one-year term at a rate of \$1,750.00 per month; a \$875.00 security deposit was collected at that time. Sometime in October of 2016, the Tenant moved out, not having paid the October rent. He did not provide written notice to end the tenancy, which would have been effective the end of November. The Landlord further indicates that the Tenant had sub-let the premises without permission. The Landlord claims \$3,500.00 in rent arrears for October and November 2016.

The Landlord testified that the place was left "a complete mess"; the wood floor was damaged and the carpet was also stained. There was a considerable amount of cleaning required before the premises could be re-listed for new renters. The Landlord presented invoices to prove a \$273.00 cleaning expense and \$126.00 carpet cleaning expense. The keys and key fob to enter the building were not returned; the Landlord incurred a \$200.00 expense to change out the key fob for the strata building and another \$99.75 for new mailbox and rental unit keys. The Landlord also claimed \$150.00 for two late payment fees during the tenancy, pursuant to terms in the agreement.

The Landlord was unable to re-rent the premises immediately and lost another few weeks of rent, incurring a \$700.00 rent revenue loss, which she also claims in this Application.

Analysis and Conclusion

Rule 7.3 of the Residential Tenancy Branch Rules of Procedure states if a party or their agent fails to attend a 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. I determined that the Tenant had been served with notice of the hearing with his proper name, and that he chose not to be represented or appear at the hearing; the hearing proceeded in his absence.

Under section 7 of the Act, a tenant who fails to comply with the Act must compensate the other party for damage or loss that results. To be successful in a claim for compensation for damage or loss the Applicant has the burden to provide sufficient evidence to establish the following four points:

1. that a damage or loss exists;
2. that the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
3. the value of the damage or loss; **and**
4. steps taken, if any, to mitigate the damage or loss.

The Tenant did not provide proper written notice to end this tenancy and is therefore liable for the rent arrears for the month of October and November in the sum of **\$3,500.00**. In addition, the Tenant is liable under the fixed term tenancy agreement to cover lost rent revenue while the Landlord attempted to locate a new renter. I find that the Landlord took reasonable measures to secure a new renter in a timely manner and that she is entitled to **\$700.00** for lost rent revenue.

I further find that the Tenant failed to leave the premises in a condition which is “*reasonably clean and undamaged except for reasonable wear and tear*”, as required under section 37(2) of the Act. The Landlord had to clean out the rental unit quickly to show and re-rent it to mitigate her losses. I find that her cleaning expenses are reasonable and I award her **\$273.00** for the cleaning and **\$126.00** for the carpet cleaning.

Under section 7 of the Regulations to the Act, the Landlord may charge back the cost of replacing keys or access devices and not more than \$25.00 for an NSF cheque returned by a financial institution. With respect to the late fee charges, the Landlord is only entitled to the maximum of \$25.00 for each of the two late fees resulting from the NSF cheques; the Landlord is awarded **\$50.00** for this claim. Finally, the Landlord is entitled to **\$299.75** for replacement of all keys and entry fobs, as per the invoices provided as evidence.

The Landlord has asked to apply the \$875.00 security deposit against the monetary award. In the Landlord's initial application, this was allowed. However, as a result of the Landlord's error of not naming the proper Tenant in her application, she was required to file an entirely new Application. Under section 38(1) of the Act, the Landlord was required to either repay the security deposit to the Tenant or file for a dispute resolution *within 15 days* after the tenancy ends; any failure to comply would result in the Tenant being entitled to double the amount of his security deposit. However, section 38(2) states that the Tenant's right to the return of the security deposit is extinguished if he fails to participate in a move-out inspection, as per section 36(1). The Landlord did not provide evidence that she offered the Tenant at least two attempts to meet together to inspect the condition of the rental unit at the end of the tenancy. Accordingly, the Tenant is still entitled to the return of his security deposit, at double the original amount. As the Tenant owes the Landlord money, I am prepared to off-set the amount of the monetary claim by the amount of the security deposit owed to the Tenant:

Calculation of Monetary Award:

Rent arrears and loss	4200.00
Late fees allowed per Regulations	50.00
Cleaning and garbage removal	273.00
Carpet cleaning	126.00
Replacement of keys	299.75
Less security deposit owed to Tenant	(1,750.00)
Total Monetary Order to Landlord	3,198.75

This order must be served on the Tenant and may then be filed in the Small Claims Division of the Provincial Court and enforced as an order of that court if the Tenant fails to make payment. Copies of this order are attached to the Landlord's copy of this decision.

Conclusion

The Tenant shall pay the Landlord the sum of \$3,198.75 forthwith.

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: June 22, 2018

Residential Tenancy Branch