



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MNDC, FF

Introduction

This hearing dealt with applications from both the landlord and the tenants under the *Residential Tenancy Act* (the *Act*). The landlord applied for:

- a monetary order for unpaid rent pursuant to section 67;
- authorization to recover her filing fee for this application from the tenant pursuant to section 72.

The tenant applied for:

- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67.

Both parties attended the hearing via conference call and provided affirmed testimony. Both parties confirmed receipt of the notice of hearing package and the submitted documentary evidence of the other party. Neither party raised any issues with service. As both parties have attended and have confirmed receipt of the notice of hearing package and the submitted documentary evidence, I am satisfied that both parties have been sufficiently served as per section 90 of the *Act*.

At the outset, the tenant clarified that her monetary claim would be reduced to \$525.00. No issues were raised by the landlord. The hearing proceeded on the landlord's and the tenant's clarified monetary claim.

Issue(s) to be Decided

Is the landlord entitled to a monetary order for unpaid rent and recovery of the filing fee?

Is the tenant entitled to a monetary order for money owed or compensation?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the both the tenant's claim and the landlord's cross claim and my findings around each are set out below.

This tenancy began on June 1, 2015 on a fixed term tenancy ending on June 1, 2016 and then thereafter on a month-to-month basis as shown by the submitted copy of the signed tenancy agreement dated April 25, 2015. The monthly rent was \$950.00 payable on the 1st day of each month. Both parties agreed that the monthly rent was later increased to \$1,013.17. A security deposit of \$475.00 was paid on April 26, 2015.

The landlord seeks a monetary claim of \$981.86 which consists of:

\$981.86 Unpaid Rent, December 2017

The landlord clarified that this claim was after reducing a payment of \$31.86 by the tenant for the monthly rent of \$1,013.17. The landlord claims that the tenant failed to provide proper notice to end the tenancy. Both parties confirmed that the tenant provided notice on November 12, 2017 via email to the landlord to end the tenancy on November 15, 2017. The landlord claims that the rental space was not re-rented after attempts to do so. The landlord states that a loss of rental income occurred due to the tenant's failure to provide proper notice. The tenant provided affirmed testimony confirming that the insufficient notice was given.

The tenant seeks a clarified monetary claim of \$525.00 which consists of:

\$475.00 Return of Original Security Deposit
\$50.00 Compensation, recovery of \$50.00 paid for home renovation

Both parties confirmed that the landlord holds the \$475.00 security deposit paid by the tenant in dispute.

During the hearing both parties agreed to mutually settle the second portion of the tenant's claim of \$50.00 for home renovations. Section 63 of the Residential Tenancy Act provides that the parties may attempt to settle their dispute during a hearing. Pursuant to this provision, discussion between the two parties during the hearing led to

a resolution. Specifically, it was agreed that the landlord will pay to the tenant, \$25.00 in full and final settlement of this portion of her claim. The parties confirmed at the end of the hearing that this agreement was made on a voluntary basis and that the parties understood the nature of this full and final settlement of this matter.

Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. 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 of the *Act* 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.

In this case, I accept the undisputed evidence of both parties and find that the tenant failed to provide proper 1 months' notice to end the tenancy. Both parties confirmed that the tenant gave notice via email on November 12, 2017 and vacated the rental space on November 15, 2017. The landlord provided undisputed affirmed evidence that efforts were made to re-rent the unit, but was unsuccessful in re-renting. As such, I find that the landlord has established a claim for loss of rental income of \$981.86 the unpaid portion of the December 2017 rent.

The landlord having been successful in her application is entitled to recovery of the \$100.00 filing fee.

The tenant is entitled to recovery of the \$475.00 security deposit, the \$25.00 reached in settlement over home renovations and recovery of the \$100.00 filing fee, for a total of \$600.00.

In offsetting these claims, I authorize the landlord in partial satisfaction of this claim to credit the tenant \$600.00. The landlord is granted a monetary order for the difference of \$581.86.

Conclusion

The landlord is granted a monetary order for \$581.86.

This order must be served upon the tenant. Should the tenant fail to comply with this order, the 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: July 17, 2018

Residential Tenancy Branch