



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MND, MNSD, FF

Introduction

This hearing was convened in response to an application for dispute resolution made on January 19, 2018 by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. A Monetary Order for unpaid rent - Section 67;
2. A Monetary Order for damages to the unit - Section 67;
3. An Order to retain the security deposit - Section 38; and
4. An Order to recover the filing fee for this application - Section 72.

The Tenant did not attend the hearing. I accept the Landlord's evidence that the Tenant was served with the application for dispute resolution and notice of hearing (the “Materials”) by registered mail on January 23, 2018 in accordance with Section 89 of the Act. Section 90 of the Act provides that a document served in accordance with section 89 of the Act is deemed to be received if given or served by mail, on the 5th day after it is mailed. Given the evidence of registered mail I find that the Tenant is deemed to have received the Materials on January 28, 2018. The Landlord was given full opportunity to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Is the Landlord entitled to the monetary amounts claimed?

Background and Evidence

The Landlord confirmed the following facts: The tenancy, under written agreement, started on November 1, 2016. Rent of \$1,550.00 was payable on the first day of each month. At the outset of the tenancy the Landlord collected \$775.00 as a security deposit. The Parties mutually conducted a move-in inspection with a completed report copied to the Tenant. On December 11, 2017 the Tenant gave notice to end the tenancy for December 31, 2017 and on the same notice the Tenant provided its forwarding address. The Tenant moved out of the unit on December 31, 2017 and attended the move-out inspection on that date. The Tenant did not agree with the Landlord's assessment of damages and refused to sign the report. The Landlord did not indicate the state of the unit other than to set out the costs being claimed in the application. The Tenant was provided a copy of the inspection report on December 31, 2017.

The Tenant left a closet mirror door broken. The Landlord claims the costs for the repairs of \$110.25 and provides the invoice for this cost.

The Tenant left the unit unclean and with garbage and household items. The Landlord claims \$360.00 and submits that this cost is based on 8 hours of cleaning at \$45.00 per hour. No invoice was provided. Photos were provided. The Landlord did not incur the costs claimed. The Landlord only incurred the costs of \$100.00 paid to its caretaker who did the cleaning.

The Tenant left 7 blinds damaged and 4 blinds were missing. The tenancy agreement provides for liquidated damages of \$10.00 per blind and claims \$110.00. The blinds were two years old. The Landlord believes that the Tenant did not operate the blinds properly causing the damage despite the Tenant being given instructions on the proper use of the blinds at the outset of the tenancy.

The Tenant failed to return one fob and one key. The Landlord claims \$75.00 for the fob replacement and \$25.00 for the key replacement. No invoice or receipts for these costs were provided and the Landlord does not know the actual costs that were incurred.

The Tenant did not give a full month's notice. The Landlord advertised the unit the same day that the Tenant gave notice. The unit was advertised for January 1, 2018 occupancy along with 5 other similarly sized units. The Tenant's unit did not get rented until January 19, 2018 as it was in a less desirable location than the 4 units that did get rented for January 1, 2018. The Landlord claims \$903.09 as the prorated portion of the rent for the period that the unit was not rented in January 2018.

Analysis

Section 37 of the Act provides 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, and give the landlord all the keys or other means of access that are in the possession or control of the tenant and that allow access to and within the residential property. Section 7 of the Act provides that where a tenant does not comply with the Act, regulation or tenancy agreement, the tenant must compensate the landlord for damage or loss that results. This section further provides that where a landlord or tenant claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement the claiming party must do whatever is reasonable to minimize the damage or loss.

Given the Landlord's evidence that the only costs incurred for cleaning was **\$100.00**. I find that the Landlord's entitlement to cleaning costs is limited to this amount. As there is no evidence of the actual costs to replace the key and fob, I dismiss this claim. Given the undisputed evidence of the damaged and missing blinds, the age of the blinds and the provision for liquidated damages amount for each damaged blind, I find that the Landlord has substantiated its claim for **\$110.00**. Based on the undisputed evidence

that the Tenant left the mirror door damaged and considering the invoice that supports the costs claimed I find that the Landlord is entitled to the costs of **\$110.25** for repairing the door. Accepting that the Landlord's undisputed evidence that it acted to mitigate the loss of rental monies by immediately advertising the unit upon receipt of the Tenant's notice and considering that the Tenant did not provide a full month's notice to the Landlord I find that the Landlord has substantiated lost rental income of **\$903.09**. As the Landlord's claims have been primarily successful I find that the Landlord is entitled to recovery of the **\$100.00** filing fee for a total entitlement of **\$1,323.34**.

Section 38 of the Act provides that within 15 days after the later of the date the tenancy ends, and the date the landlord receives the tenant's forwarding address in writing, the landlord must repay the security deposit or make an application for dispute resolution claiming against the security deposit. Where a landlord fails to comply with this section, the landlord must pay the tenant double the amount of the security deposit. Policy Guideline #17 provides as follows:

If a landlord does not return the security deposit or apply for dispute resolution to retain the security deposit within the time required, and subsequently applies for dispute resolution in respect of monetary claims arising out of the tenancy, any monetary amount awarded will be set off against double the amount of the deposit plus interest.

Although the above section of the Act and policy was not addressed at the hearing but upon review of only the Landlord's evidence before me that the Tenant moved out of the unit on December 31, 2018 after having provided her forwarding address in writing to the Landlord and considering that the Landlord's application was made January 19, 2018, I find that the Landlord did not apply to claim against the security deposit within the time required under the Act. As the Landlord is still holding the security deposit I find that the Landlord must now pay the Tenant double the security deposit plus zero interest of **\$1,550.00**. Deducting the Landlord's entitlement of **\$1,323.34** from the amount owed to the Tenant leaves **\$226.66** to be returned to the Tenant.

Conclusion

I grant the Tenant an order under Section 67 of the Act for **\$226.66**. If necessary, this order may be filed in the Small Claims 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 Act.

Dated: August 24, 2018

Residential Tenancy Branch