



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR-S, FF

Introduction

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

- a monetary order for unpaid rent pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38;
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

Both parties attended the hearing via conference call and provided affirmed testimony. Both parties confirmed receipt of the landlord's notice of hearing package, the landlord's submitted documentary evidence and the tenant's submitted documentary evidence. Neither party raised any service issues. As such, I find that both parties have been sufficiently served and are deemed served as per section 90 of the Act.

Issue(s) to be Decided

Is the landlord entitled to a monetary order for unpaid rent and recovery of the filing fee?
Is the landlord entitled to retain all or part of the security deposit?

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 applicant's claim and my findings are set out below.

This tenancy began on August 9, 2017 on a fixed term tenancy ending on August 8, 2018 as per the submitted copy of the signed tenancy agreement dated June 3, 2017. The monthly rent was \$2,500.00 and a security deposit of \$1,250.00 was paid on August 9, 2017.

Both parties agreed that the tenancy ended on February 8, 2018 when the tenant returned the rental unit keys to the landlord.

The landlord seeks a clarified/amended monetary claim of \$2,876.04 which consists of:

\$2,500.00	Loss of Rental Income, February 8, 2018- March 9, 2018
\$179.33	Unpaid Hydro, December 2/17- February 1/18
\$13.26	Unpaid Hydro, February 2/18- February 8/18
\$82.29	Unpaid Fortis, January 3/18- January 31/18
\$27.21	Unpaid Fortis, January 31/18- February 8/18
\$73.95	Unpaid Municipal Utilities, January 1/18-February 8/18

The landlord claimed that the tenant failed to provide proper notice to end the tenancy and as result suffered a loss of rental income. The landlord also claims that there are unpaid utilities that the tenant has failed to pay that were incurred during the tenancy. The tenant disputed the landlord's claim stating that a mutual agreement to end the tenancy had been made with the landlord to end the tenancy on February 8, 2018. The landlord disputed the tenant's claims that notice to end the tenancy was properly given. The landlord claims that on January 18, 2018 the tenant stated that they "might be moving", but provided no end of tenancy date or anything in writing. The tenant provided undisputed affirmed testimony and confirmed that no notice to end the tenancy was given to the landlord in writing nor did the tenant provide an end of tenancy date to the landlord. On January 22, 2018 the landlord notified her agent to advertise the rental unit, but was unsuccessful re-renting until August 15, 2018.

During the hearing the tenant conceded the landlord's claims for the unpaid utilities (hydro, fortis and municipal utilities) incurred during the tenancy as claimed by the landlord. The tenant noted that a cheque was given to the landlord on September 18, 2018 for \$317.26 based upon the invoices provided by the landlord. The landlord confirmed receipt of the cheque and noted that there was a difference of \$58.78 owing.

In support of these claims, the landlord has provided:

Copy of Hydro invoice, December 2/17- February 1/18

Copy of Hydro Invoice, February 2/18- February 8/18
Copy of Fortis invoice, January 3/18- January 31/18
Copy of Fortis, January 31/18- February 8/18

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 find based upon the evidence submissions of both parties that the landlord has established a claim as filed. I find that the tenant failed to provide proper notice to end the tenancy which caused the pre-mature ending to the tenancy. The landlord made reasonable efforts to re-rent the unit, but was unsuccessful until August 15, 2018. On this basis, I find that the landlord is entitled to compensation for the loss of rental income of \$2,500.00 for the period February 8, 2018 to March 8, 2018 as claimed.

During the hearing the tenant conceded the landlord's claims that utility services incurred during the tenancy were unpaid by the landlord for a total of \$376.04. However, both parties confirmed that a payment cheque was received by the landlord from the tenant for \$317.26 leaving a difference of \$58.78. As such, I grant the landlord the monetary claim for the remaining owed of \$58.78 for utilities.

The landlord is also entitled to recovery of the filing fee of \$100.00. I authorize the landlord to retain the \$1,250.00 security deposit currently held in partial satisfaction of the claim.

Conclusion

The landlord is granted a monetary order for \$1,667.26.

This order must be served upon the tenant. Should the tenant fail to comply with the 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: October 24, 2018

Residential Tenancy Branch