



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL-S, MNRL-S, FFL

Introduction

This hearing dealt with the Landlord's Application for Dispute Resolution filed under the *Residential Tenancy Act* (the "*Act*"), made on May 25, 2018. The Landlord applied for a monetary order for unpaid rent and damages and losses due to the tenancy, permission to retain the security deposit and to recover the filing fee paid for the application. The matter was set for a conference call.

The Landlord attended the hearing and was affirmed to be truthful in her testimony. As the Tenant did not attend the hearing, service of the Notice of Dispute Resolution Hearing was considered. Section 59 of the *Act* states that the respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing. The Landlord testified the Application for Dispute Resolution, and Notice of Hearing had been sent to the Tenants by registered mail on August 9, 2018, a Canada post tracking number was provided as evidence of service. Section 90 of the *Act* determines that a document served in this manner is deemed to have been received five days later. I find that the Tenant has been duly served in accordance with the *Act*.

The Landlord was provided with the opportunity to present her evidence orally and in written and documentary form, and to make submissions at the hearing.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

- Is the Landlord entitled to a monetary order for unpaid rent?
- Is the Landlord entitled to a monetary order for damages or losses due to the tenancy?
- Is the Landlord entitled to retain the security deposit?
- Is the Landlord entitled to the return for their filing fee for this application?

Background and Evidence

The Landlord testified that the tenancy began on June 3, 2017, as a 13-month fixed term tenancy, ending June 30, 2018. Rent in the amount of \$1,050.00 was to be paid by the first day of each month and the Landlord had been given a \$525.00 security deposit at the outset of the tenancy. The Landlord provided a copy of the tenancy agreement into documentary evidence.

The Landlord testified that she had issued a 10-Day Notice to End the Tenancy for Unpaid Rent or Utilities (the "Notice"), in March 2018. The Notice indicated that the Tenant was outstanding \$550.00. The Landlord testified that the Tenant moved out of the rental unit on May 4, 2018, in accordance with the Notice.

The Landlord testified that the Tenant did not participate in the move-out inspection and that she had refused to provide her forwarding address to the Landlord. The Landlord testified that she followed the Tenant's moving truck on the day the Tenant moved out, in order to obtain the Tenant new address.

The Landlord testified that when she took possession of the rental unit she conducted the move-out inspection on her own and discovered that the fencing in the back of the rental property had completely been removed by the tenant, that several planks of the wood fence in the front of the rental property had been broken by the tenant and that there was a large chunk of wood missing from the frame of the front door. The Landlord is looking to recover, \$315.58 in costs for repairs to the rental unit; the Landlord stated that she is not seeking her labour costs for the repairs just the cost of supplies. The Landlord provided an invoice and five pictures into documentary evidence.

The Landlord also testified that she had found a new renter to take over the rental unit as of July 2018 and is seeking to recover the loss of rental income for June 2018. When

asked the Landlord could not say why it had taken over eight weeks to secure a new renter to take over the rental unit.

Analysis

Based on the undisputed testimony of the Landlord, the documentary evidence before me, and on a balance of probabilities, I find as follows:

Section 46 of the Act requires that upon receipt of a Notice to End Tenancy for Non-payment of Rent a tenant must, within five days, either pay the amount of the arrears indicated on the Notice or dispute the notice by filing an Application for Dispute Resolution with the Residential Tenancy Branch. If the tenant does not do either of these things, the tenant is conclusively presumed to have accepted the Notice under section 46(5).

Landlord's notice: non-payment of rent

- 46** (1) A landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice.
- (2) A notice under this section must comply with section 52 *[form and content of notice to end tenancy]*.
- (3) A notice under this section has no effect if the amount of rent that is unpaid is an amount the tenant is permitted under this Act to deduct from rent.
- (4) Within 5 days after receiving a notice under this section, the tenant may
- (a) pay the overdue rent, in which case the notice has no effect,
 - or
 - (b) dispute the notice by making an application for dispute resolution.
- (5) If a tenant who has received a notice under this section does not pay the rent or make an application for dispute resolution in accordance with subsection (4), the tenant
- (a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and
 - (b) must vacate the rental unit to which the notice relates by that date.

I find that the Tenant received the 10-Day notice and that the Tenant moved out in accordance with the Notice on May 4, 2018. I find that the Tenant was in breach of section 26 of the *Act* by not paying the rent in accordance with the tenancy agreement. Therefore, I find that the Landlord has established an entitlement to recover the unpaid rent for March, April and May 2018, in the amount of \$2,650.00.

I accept the undisputed testimony of the Landlord that there was damage to the front and backyard fencing and to the front door of the rental unit.

Awards for compensation due to damage or loss are provided for under sections 7 and 67 of the *Act*. A party that makes an application for monetary compensation against another party has the burden to prove their claim. The Residential Tenancy Policy Guideline #16 Compensation for Damage or Loss provides guidance on how an applicant must prove their claim. The policy guide states the following:

“The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. To determine whether compensation is due, the arbitrator may determine whether:

- A party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
- Loss or damage has resulted from this non-compliance;
- The party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
- The party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

Pursuant to section 32(3) of the Act, a tenant is responsible for repairing all damage to the rental unit cause during their tenancy.

Landlord and tenant obligations to repair and maintain

32 (3) A tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.

I find that the Tenant damaged the damaged the front and backyard fencing and the front door of the rental unit during the tenancy. Therefore, I find that the Landlord has established an entitlement to recover the full costs associated with repairing the fencing

and front door of the rental unit. I award the Landlord the recovery of the \$315.58 she spent to repair the rental unit.

As for the Landlord request for the loss of rental income for June 2018. I find that the Landlord has not provided sufficient evidence or testimony to account for why it took over eight weeks to re-rent the rental unit. I find that the Landlord did not act reasonably to minimize the loss of rental income for June 2018, and therefore, I decline to award the Landlord the rent for June 2018.

Overall, I find that the Landlord has established an entitlement to a monetary order in the amount of \$2,365.58; consisting of \$2,650.00 in outstanding rent for March, April and May 2018, \$315.58 in repairs due to damage to the rental unit, less the \$600.00 deposit the Landlord holds for this tenancy.

As the Landlord has been successful in her application, I find that the Landlord is entitled to recover the \$100.00 filing fee paid for his application

Conclusion

I find for the Landlord under sections 67 and 72 of the Act. I grant the Landlord a **Monetary Order** in the amount of **\$2,465.58**. The Landlord is provided with this Order in the above terms, and the Tenants must be served with this Order as soon as possible. Should the Tenants 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: September 27, 2018

Residential Tenancy Branch