



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNSD, MNDC, MNR, FF

Introduction

This hearing was convened in response to an application by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. A Monetary Order for damages to the unit - Section 67;
2. An Order to retain the security deposit - Section 38;
3. A Monetary Order for unpaid rent - Section 67;
4. A Monetary Order for compensation - Section 67; and
5. 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 March 7, 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 March 12, 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 tenancy started on June 1, 2012. A previous decision dated January 9, 2018 recorded the outcome of the Landlord's application for unpaid rent and an order of possession. In this decision it is recorded that the Landlord waived its claim to full rent for January 2018 and limited its claim to unpaid rent for January 1 to 9, 2018 inclusive. This amount plus the previous arrears was granted to the Landlord in a monetary order along with an order of possession that was effective two days after service on the Tenant. This previous decision also dealt with the security deposit. At the time of the previous hearing rent of \$1,280.00 was payable on the first day of each month.

After service of the order of possession the Tenant refused to move out of the unit and on January 19, 2018 the Tenant sent a text informing the Landlord that a bailiff would be required to remove the Tenant. On that same date the Landlord obtained a Writ of Possession and this was executed by bailiffs on February 6, 2018. The bailiff removed the last of the items left in the unit for the Landlord to dispose of.

The Landlord claims the bailiff costs of \$1,390.00 and provides the invoice for this cost. The Landlord claims the costs of obtaining the Writ of \$146.25 and provides the invoice for this cost. The Landlord claims unpaid rent for the period January 9 to 31, 2018 of \$908.39 and for the period February 1 to 6, 2018 of \$274.28.

The Landlord states that as the Tenant had changed the locks without the Landlord's permission the Landlord had to obtain a locksmith for entry into the unit. The Landlord also changed the locks. The Landlord claims \$106.77 and provides the receipt for the costs incurred. It is noted in a document submitted by the Landlord that an inspection of the unit was conducted on December 1, 2017 and in this inspection report it is noted that the Landlord was informed of the lock change. The Landlord states that her management company did not inform the Landlord of the change in the locks and that upon attending the unit with the bailiff the Landlord had to call a locksmith.

The Landlord states that the Tenant left the unit unclean and claims \$257.25. The Landlord claims the disposal costs of \$390.00 for the items removed by the bailiff. The Landlord states that the Tenant left lightbulbs missing or not working and the Landlord claims the replacement costs of \$93.10. The Landlord provides the receipts for the costs claimed.

The Landlord states that the Tenant did not provide a forwarding address so the Landlord had to hire a skip tracer to locate the Tenant. The Landlord claims the costs of \$309.75 and provides the receipt.

The Landlord states that the Tenant painted two bedrooms without the permission of the Landlord. The Landlord claims the repainting costs of \$393.75. It is noted that the inspection report of December 1, 2017 notes that the walls had been painted. The Landlord states that the last time the unit was painted was prior to the start of the tenancy. The Landlord states that the unit was not subsequently rented and has since been sold.

The Landlord claims the costs of registered mail service to the Tenant of \$19.64.

Analysis

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. As nothing in the Act requires the Tenant to provide a forwarding address or a subsequent residential address to the Landlord I find that the Landlord has not substantiated that the Tenant breached the Act. I therefore dismiss the Landlord's claim for costs to locate the Tenant by use of a skip tracer. Nothing in the Act provides for the reimbursement of any of the costs associated

with participating in the dispute resolution proceedings beyond a claim for recovery of the filing fee. I therefore dismiss the claim for the Landlord's costs to serve the Tenant with documents for these proceedings.

Policy Guideline #40 provides that the life of indoor paint is four years. Based on the Landlord's evidence that the unit had not been painted since before 2012 I find that there was no longer any value left to the original paint and that the Landlord has not substantiated that the Tenant caused any loss. Further, as the Landlord's Agents were aware of the paint and locks at the beginning of December 2017 and as no requests were made to the Tenant to make repairs to the paint or to provide keys to the Landlord after the discovery of the paint and lock change I find that the Landlord failed to take any reasonable steps to mitigate this loss. I dismiss the claim for painting the two bedrooms and the costs to replace the keys and locks.

Based on the undisputed and supported evidence that the Tenant refused to move out of the unit I find that the Landlord is entitled to the costs of obtaining the Writ and the bailiff costs for enforcement in the amounts of **\$146.25** and **\$1,390.26**.

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. Based on the undisputed evidence that the Tenant failed to leave the unit reasonably clean, left garbage in the unit, and failed to leave the unit with lightbulbs and considering the receipts I find that the Landlord has substantiated an entitlement to the incurred costs to clean the unit and to remove the garbage in the amounts of **\$257.25** and **\$390.00** and **\$93.10**.

Section 77(3) of the Act provides that a decision or an order of the director under this Part is final and binding on the parties. As the previous decision grants the Landlord unpaid rent for a portion of January 2018 and as the Landlord waived its rights to claim rent any other rent for January 2018 in the previous decision I find that the Landlord

may not now claim unpaid rent for the period January 10 to 31 inclusive and I dismiss that claim. As the Tenant was in the unit until February 6, 2018 and did not pay any rent for this month I find that the Landlord has substantiated the unpaid rent claim of **\$274.28** for the period February 1 to 6, 2018 inclusive. As the previous decision also dealt with the security deposit I dismiss the claim for retention of the security deposit.

As the Landlord's claims have been mostly successful I find that the Landlord is entitled to recovery of the **\$100.00** filing fee for a total entitlement of **\$2,651.14**.

Conclusion

I grant the Landlord an order under Section 67 of the Act for **\$2,651.14**. 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 *Residential Tenancy Act*.

Dated: September 21, 2018

Residential Tenancy Branch