



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND MNR MNDC MNSD 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, damage and compensation for loss 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.

The hearing was conducted by conference call. The tenant did not attend this hearing, although I waited until 2:05 p.m. in order to enable the tenant to connect with this teleconference hearing scheduled for 1:30 p.m. The landlord attended the hearing and was given a full opportunity to provide affirmed testimony and present evidence.

The landlord testified that on July 18, 2018, a copy of the Application for Dispute Resolution and Notice of Hearing was sent to the tenant by registered mail. The landlord provided a registered mail tracking number(s) in support of service.

Based on the above evidence, I am satisfied that the tenant was deemed served with the Application for Dispute Resolution and Notice of Dispute Resolution Hearing pursuant to sections 89 & 90 of the Act. The hearing proceeded in the absence of the tenant.

Issues

Is the landlord entitled to a monetary award for unpaid rent, damage or loss?

Is the landlord entitled to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary award requested?

Is the landlord entitled to recover the filing fee for this application from the tenant?

Background and Evidence

The tenancy began on November 1, 2017 with a monthly rent of \$1125.00 payable on the 1st day of each month. The lease was for a one year fixed term ending on October 31, 2018. The tenant paid a security deposit of \$500.00 at the start of the tenancy which the landlord continues to hold. The tenant provided verbal notice the rental unit had been vacated on June 27, 2018.

The landlord is claiming \$3600.00 which is comprised of a difference of \$400.00 per month for a period of 9 months during which she claims the lease was made under false pretenses. The landlord claims the rental unit was occupied additional persons other than just the tenant named in the agreement. The landlord is also claiming \$180.00 for increased internet costs as a result of the additional occupants. The landlord testified that she lives in another geographic region than the rental unit so she did not become aware of the additional occupants until February 2018. She also became aware at this time that the tenant was going into residential care and that his son would continue to reside in the rental unit. She agreed to allow the tenants son to stay on an interim basis but requested a new lease be drawn up. A new lease was never drafted and the parties came to an agreement to mutually end the tenancy on July 31, 2018. She was advised by the tenant that his son moved out on June 27, 2018.

The landlord is claiming loss of rent for the month of July 2018 as the tenant did not provide sufficient notice to end the tenancy.

The landlord testified that the tenant left the rental unit in a state of uncleanliness and disrepair. The landlord submitted a move-in and move-out condition inspection report plus various pictures of the rental unit at the end of the tenancy as evidence. The landlord testified that the tenant did not participate in the move-out inspection. The landlord is claiming \$400.00 for various cleaning related costs and damages. The landlord testified that she spent an entire day cleaning the rental unit herself including the stove, floors, carpets, walls, and sheets. The landlord testified that a mattress provided in the unit was severely stained as was the floor of the parking garage.

Analysis

Section 7 of the Act provides for an award for compensation for damage or loss as a result of a landlord or tenant not complying with this Act, the regulations or their tenancy

agreement. Under this section, the party claiming the damage or loss must do whatever is reasonable to minimize the damage or loss.

Section 26 of the Act requires that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

Section 37 of the Act requires 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.

I find that the tenant did not leave the rental unit reasonably clean and undamaged and this is supported by the landlord's evidence submissions and undisputed testimony. I find that the landlord has established the existence of the damage or loss as claimed and that it occurred due to the actions or neglect of the tenant. I find the landlord's claim of \$400.00 to be a reasonable estimate to compensate the landlord for the cleaning work required as well as damage from stains to the mattress and garage floor.

I accept the landlord's uncontested testimony and supporting evidence and find the landlord has suffered a loss of rental income for the month of July 2018 in the amount of \$1125.00.

The landlord's claims for losses for the difference in the rental rate as well as increased hydro and internet charges as a result of the additional occupants are dismissed. The landlord could have mitigated her losses and sought an end to the tenancy for cause if the tenant was in breach of a material term of the tenancy.

As the landlord was only partly successful in this application, I find that the landlord is entitled to recover one half of the filing fee paid for this application for an award of \$50.00.

The landlord is entitled to a total monetary award of \$1575.00.

The landlord continues to hold a security deposit in the amount of \$500.00. I allow the landlord to retain the security deposit in partial satisfaction of the monetary award pursuant to section 38 of the Act.

Therefore, I find that the landlord is entitled to a Monetary Order in the amount of \$1075.00.

Conclusion

Pursuant to section 67 of the *Act*, I grant the landlord a Monetary Order in the amount of \$1075.00. Should the tenant 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: November 20, 2018

Residential Tenancy Branch