



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND MNR MNDC 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/or loss pursuant to section 67;
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The hearing was conducted by conference call. All named parties attended the hearing and were given a full opportunity to provide affirmed testimony and present evidence. No issues were raised with respect to the service of the landlord's application and all evidence on file.

Issues

Is the landlord entitled to a monetary award for unpaid rent, damage and/or loss?
Is the landlord entitled to recover the filing fee for this application from the tenant?

Background and Evidence

This two year fixed term tenancy began on May 1, 2018 with a monthly rent of \$2200.00 payable on the 1st day of each month. The tenant paid a security deposit of \$1100.00 at the start of the tenancy which was returned to the tenant in full on July 17, 2018, the date the tenancy ended.

The landlord submitted a "monetary order worksheet" which provides a breakdown of the landlord's claims totaling \$5,462.29. The landlord's submission as well as the tenant's response to each of these items is summarized as follows:

Item #1 and #2 - \$2200.00 for loss of rent for one month plus \$1150.00 for costs incurred to advertise the unit through an agent. The landlord testified the tenant

breached the fixed term contract by ending the tenancy early. The tenant provided verbal notice on June 28, 2018 stating an effective move out date of July 15, 2018. The landlord testified that he was not able to secure another tenant until September 1, 2018 but is only claiming loss for one month. The landlord hired an agent to advertise the unit and submitted an invoice dated July 1, 2018.

The tenant acknowledged she did not provide proper notice but alleges the landlord failed to perform requested repairs.

Item #3 - \$592.00 for a late rent fee. The landlord is claiming a daily charge of \$74.00 for rent being 8 days late in June 2018.

Item #4 - \$442.29 for shortage of rent for June 2018. The landlord testified the tenant only made a partial payment for this month and provided a bank statement in support of the amount paid.

The tenant testified that the amount deducted for June 2018 rent was for deductions for various items to which the landlord agreed.

Item #5 - \$200.00 for a missing sofa bed. The landlord testified that a sofa bed was provided with the tenancy but was missing at the end of the tenancy. The landlord submitted a quote for replacement of a similar sofa bed.

The tenant testified that she had the sofa bed removed due to allergies and the landlord was aware of this and agreed to it.

The landlord denied agreeing to the dumping of the sofa bed.

Item #6 - \$200.00 for move-in fee paid to the strata by the landlord on behalf of the tenant.

The tenant submits that the landlord did not mention anything about a move-in fee in the lease and only advised her afterwards. The landlord later agreed to pay this amount.

Item #7 and #10 - \$200.00 for a quote for wall repair plus \$180.00 for cleaning and lock service. The landlord testified the tenant left the walls scratched and dented and the carpets and unit unclean. The landlord submitted pictures in support. Move-in and move-out condition inspection reports were not completed. The landlord testified a lock to a bathroom door was broken.

The tenant submits that the landlord did not do any move-in or move-out and did not question these items when returning her deposit in full. The tenant submits she was never provided a key for the bathroom lock to begin with and she accidentally locked it which required it to be serviced.

The landlord testified that he only returned the deposit in full as the tenant was threatening to not return the keys.

Item #8 – \$100 filing fee and \$50.00 postage fee.

Item #9 – \$148.00 for unpaid rent of two days from July 15, 2018 to July 17, 2018. The landlord testified the tenant only paid rent up to July 15th but did not vacate until July 17, 2018.

The tenant testified that she returned the keys to the landlord on July 15, 2018.

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.

As per section 45 of the Act, a tenant may not end a fixed term tenancy earlier than the date specified in the tenancy agreement as the end of the fixed term unless the landlord has breached a material term of the tenancy agreement.

Residential Tenancy Policy Guideline #8, Unconscionable and Material Terms, provides the following guidance:

In order to end a tenancy for a breach of a material term, the party alleging the breach must inform the other party in writing of the following:

- that there is a problem;
- that they believe the problem is a breach of a material term of the tenancy agreement;
- that the problem must be fixed by a deadline included in the letter, and that the deadline be reasonable; and
- that if the problem is not fixed by the deadline, the party will end the tenancy.

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.

As per section 7 of the *Residential Tenancy Regulation* the landlord may charge an administration fee of not more than \$25 for the return of a tenant's cheque by a financial institution or for late payment of rent if provided for in the tenancy agreement.

Item #1 and #2 – The landlord is awarded **\$2200.00** for loss of rent for one month plus **\$1150.00** for costs incurred to advertise the unit through an agent. I make this finding as the tenant breached the fixed term tenancy and the tenant provided insufficient evidence that the landlord was in breach of a material term of the tenancy.

Item #3 - \$592.00 for a late rent fee. This claim is dismissed as the charge is in excess of the permitted charge under section 7 of the Regulation and is not provided for in the tenancy agreement.

Item #4 – The landlord is awarded **\$442.29** for shortage of rent for June 2018. The tenant provided insufficient evidence that she had a right to deduct this amount from the rent.

Item #5 – The landlord is awarded **\$200.00** for the missing sofa bed. The tenant provided insufficient evidence that the landlord agreed to the disposal of this item.

Item #6 - \$200.00 for move-in fee. This claim is dismissed. I find the landlord paid this amount and this was agreed to by the parties at the time.

Item #7 and #10 - \$200.00 for a quote for wall repair plus \$180.00 for cleaning and lock service. These claims are dismissed. The landlord failed to complete move-in and move-out condition inspection reports as such there is insufficient evidence that this damage was caused by the tenant. I also accept the tenant's testimony that she was never provided a key for the bathroom lock so she is not responsible for service charges incurred for accidentally locking it.

Item #8 –\$50.00 postage fee. Costs incurred in the filing of an application are not recoverable under the Act aside from the filing fee which is addressed below.

Item #9 – \$148.00 for unpaid rent of two days. This claim is dismissed. The landlord provided insufficient evidence that the keys were returned on July 17, 2018 versus July 15, 2018 as claimed by the tenant.

As the landlord was for the most part successful in this application, I find that the landlord is entitled to recover the **\$100.00** filing fee paid for this application.

The landlord is awarded a monetary order for a total amount of **\$4,092.29**.

Conclusion

Pursuant to section 67 of the *Act*, I grant the landlord a Monetary Order in the amount of **\$4,092.29**. 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: December 19, 2018

Residential Tenancy Branch