



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC MNSD

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:

- a monetary order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement 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;

The hearing was conducted by conference call. All named parties attended the hearing and were given a full opportunity to provide affirmed testimony, to present evidence and to make submissions. The tenant’s advocate confirmed service of the landlord’s application.

The landlord testified that she did not receive the tenant’s evidence package however I find the landlord to be deemed served as the tenant provided a registered mail receipt and tracking number as proof of service.

The tenant’s advocate submits that the tenant did not receive any of the landlord’s evidence however I find the tenant also to be deemed served as the landlord also provided the tenant’s advocate with proof of service in the form of a registered mail tracking number. The tenant’s advocate acknowledged the tenant received the evidence package but it was subsequently lost in the mail when forwarded to the advocate by the tenant.

The tenant’s advocate requested the landlord send another copy of her evidence package by e-mail for their review at the outset of the hearing; however, the landlord stated she was unable to do so as she did not have a copy with her.

The parties could not agree to adjourn the matter. The landlord wished to proceed with the matter and argued that the first she heard of the other party not receiving the evidence package was late last night.

The hearing proceeded as scheduled and I found both parties properly served the other with their respective evidence packages and no evidence was excluded from this hearing.

Issues

Is the landlord entitled to a monetary order for compensation for damage or loss?
Is the landlord entitled to retain all or a portion of the security deposit?

Background and Evidence

The tenant rented a trailer on the landlord's farm property. The tenancy began on September 1, 2017 with a monthly rent of \$1200.00 payable on the 1st day of each month. The tenant paid a security deposit of \$600.00 at the start of the tenancy which the landlord continues to hold. The tenancy ended on November 30, 2017. A move-in condition inspection report was not completed. A move-out condition inspection report was not completed. The tenant was deemed to have provided a forwarding address in writing to the landlord in a previous dispute hearing.

The landlord testified the tenant left the rental unit in poor condition, damaged and filled with belongings. The landlord is claiming \$600.00 for the removal of the tenant's possessions and disposing of mattresses and furniture. The landlord is claiming \$700.00 for patching and painting of walls. The landlord is claiming \$500.00 for cleaning costs. The landlord is claiming \$250.00 for flooring repairs. The landlord is also claiming loss of rent in the amount of \$3600.00. The landlord claims she suffered a loss of income for this period as it took this long to get the unit cleaned and repaired.

The landlord submitted various pictures of the condition of the rental unit at the end of the tenancy. The landlord also submitted various invoices in support of the claim. The landlord testified that she attempted to call the tenant at the end of the tenancy to retrieve his belongings but was unsuccessful and the tenant had not provided a forwarding address at that time.

The tenant's advocate argued there was no evidence that the landlord attempted to reach out to the tenant in regards to abandoned property. Further, the tenant's advocate argues that the landlord extinguished her right to claim against the deposit by not completing a move-in and move-out inspection; therefore, the landlord's claims should be dismissed and the tenant's security deposit returned.

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.

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.

The landlord failed to complete a move-in and move-out condition inspection or provide any evidence as to the condition of the rental unit at the start of the tenancy. However, I find the pictures submitted by the landlord do support the landlord's claim that the interior of the rental unit was not left reasonably clean and full of the tenant's belongings at the end of the tenancy. I find the landlord suffered a loss to have the unit cleaned and the tenant's belongings disposed of.

The landlord is awarded **\$380.00** for the disposal of the tenant's belongings and **\$100.00** for cleaning the rental unit which are the amounts supported by the invoices submitted.

I find the picture evidence submitted by the landlord to be insufficient evidence that the rental unit was damaged by the tenant as there is no evidence of the condition of the unit at the start of the tenancy. The rest of the landlord's claims relating to the repairs and painting work are all dismissed.

I find the landlord's claim for loss of rental income for three months is unsupported. I find a more reasonable time for the clean-up and disposal of the tenant's items to be 3 days. The landlord is awarded **\$120.00** which as an approximate amount of loss of income for three days ($\$1200.00/30 \times 3$ days).

The landlord is entitled to an award of **\$600.00**. Although the landlord extinguished her right to claim against a security deposit for damages, the landlord still has the right to

make a claim for damages or retain the security deposit to offset a claim not relating to damages. The landlord may retain the tenant's security deposit in full to offset this award.

Conclusion

The landlord is entitled to an award of **\$600.00**. The landlord may retain the tenant's security deposit in full to offset this award.

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 21, 2018

Residential Tenancy Branch