



Dispute Resolution Services

Page: 1

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/or 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 2:00 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 September 21, 2018, a copy of the Application for Dispute Resolution and Notice of Hearing was sent to the tenant(s) by registered mail to a forwarding address provided by the tenant. The landlord provided a registered mail receipt and tracking number in support of service. The landlord testified that an evidence package was subsequently served to the tenant on January 2, 2019 by personal service to the tenant's daughter at the tenant's residence.

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 and/or loss?
Is the landlord entitled to retain all or a portion the security deposit?

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

Background and Evidence

This tenancy originally began on May 1, 2017 with a monthly rent of \$1750.00 payable on the 1st day of each month. On November 1, 2017 the parties entered into a one year fixed term lease which was set to expire on October 31, 2018. The tenant paid a security deposit of \$875.00 at the start of the tenancy which the landlord continues to retain.

The landlord submitted a “monetary order worksheet” which provides a breakdown of the landlord’s claims totaling \$4,289.10. The landlord’s submission and testimony for each of these items is summarized as follows:

Item #1, #3 and #4 – The landlord is claiming \$890.00 paid to a handyman for repair work, \$160.00 paid to have the unit cleaned and \$262.50 for carpet cleaning. The landlord testified the tenant left the rental unit damaged and unclean. The landlord testified the rental unit was fully renovated before move-in and submitted move-in and move-out inspection reports as well as various pictures of the before and after photos of the unit. The landlord testified the repair work included patching holes in the drywall and ceiling, painting, replacing a broken LED light and disposal of a barb-q and other items left outside. The landlord testified the rental unit had to be cleaned including the cleaning of the carpets. The landlord submitted invoices and/or e-transfer receipts for these expenses.

Item #2 – The landlord is claiming \$201.60 for repairs to a clogged washer. The landlord testified the washer was new upon move-in and was not functioning on move-out. The landlord submitted an invoice for having it repaired. The repair technician noted that he found debris in the tub and the pump which had to be cleared.

Item #5 – The landlord is claiming \$2625.00 for loss of rent for September 1, 2018 to October 15, 2018. The landlord testified that the tenant provided notice by text message on August 3, 2018 to break the fixed term lease early and moved out on September 5, 2018. The landlord testified the tenant did not pay any rent for this period and the landlord was not able to re-rent the unit until October 16, 2018. The landlord advertised the unit for rent as soon as the tenant vacated.

Item #6 – The landlord is claiming \$150.00 for rent loss for 1 ½ months due to reduced rent. The landlord testified and submitted a copy of the new tenancy agreement which they entered into at a reduced rent of \$100.00/month. The landlord acknowledged in the hearing that this claim should be revised to only ½ month’s rent.

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.

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.

Item #1, #3 and #4 – The landlord is awarded **\$1312.50** as claimed. I accept the landlord's undisputed testimony and supporting evidence of pictures and inspection reports and find the tenant did not leave the rental unit reasonably clean and undamaged. The landlord submitted invoices and proof of payment for these expenses which I find were all reasonable expenditures according to the evidence presented.

Item #2 – The landlord is awarded **\$201.60** as claimed. I accept the washer was new and the damage was caused by the tenant leaving debris in the machine.

Item #5 – The landlord is awarded **\$2625.00** for loss of rent as claimed. I make this finding as the tenant breached the fixed term tenancy and the landlord suffered this loss as a result. I find the landlord took reasonable steps to mitigate this loss and was able to secure new tenants for October 16, 2018.

Item #6 – The landlord is awarded **\$50.00** for rent loss for ½ months reduced rent. I find the landlord suffered this loss as the tenant broke the fixed term lease early and the landlord was not able to re-rent for the same amount.

The landlord has established an entitlement to an award of **\$4,189.10**.

As the landlord was successful in this application, I find that the landlord is entitled to recover the \$100.00 filing fee paid for this application for a total monetary award of **\$4289.10**.

The landlord continues to hold a security deposit and pet deposit in the amount of \$875.00. I allow the landlord to retain the security deposit and pet 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 **\$3,414.10.**

Conclusion

Pursuant to section 67 of the *Act*, I grant the landlord a Monetary Order in the amount of **\$3,414.10.** 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: January 17, 2019

Residential Tenancy Branch