



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNR MND MNDC MNSD FF

Introduction:

The tenant did not attend this hearing, although I left the teleconference hearing connection open until 1:50 p.m. in order to enable the tenant to call into this teleconference hearing scheduled for 1:30 p.m. on January 15, 2019. The landlord attended the hearing and gave sworn testimony. She was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the landlord and I were the only ones who had called into this teleconference.

The landlord requested an order for Substituted Service pursuant to section 71 of the *Residential Tenancy Act* for the Application for Dispute Resolution and any resultant orders. She explained the tenant had vacated on July 31, 2018 and has failed and refused to give any forwarding address. She said the normal means of communication between the tenant and herself was email or text and the last message was on August 27, 2018 in which the tenant still refused contact. She provided email evidence of her statements. I find the landlord is entitled to an Order that the Application and any orders are sufficiently served or given by the substituted service of email pursuant to section 71 of the Act. I find the landlord served the tenant with the Application dated September 7, 2018 by email. The landlord applies pursuant to the *Residential Tenancy Act* (the Act) for orders as follows:

- a) A monetary order pursuant to Sections 7, 46 and 67 for rent owed and damages;
- b) To retain the security deposit to offset the amount owing; and
- c) An order to recover the filing fee pursuant to Section 72.

Issue(s) to be Decided:

Has the landlord proved on a balance of probabilities that she is entitled to compensation as claimed?

Background and Evidence:

The tenant did not attend the hearing although served with the Application/Notice of Hearing. The landlord attended and was given opportunity to be heard, to present evidence and to make submissions. The landlord stated that the tenancy commenced December 15, 2017, that monthly rent was \$2200 and a security deposit of \$1100 was paid. The landlord said that the tenant was not paying rent when due and she served a 10 Day Notice to End Tenancy dated June 5, 2018 to be effective June 18, 2018. The Notice stated the tenant owed \$3460 as of June 1, 2018. The tenant did not dispute the Notice. She said the tenant then paid \$2880 of this amount on June 8 and \$600 on July 4, 2018 but did not pay the \$2200 rent owed on July 1, 2018. She paid no further rent and vacated on July 31, 2018. The landlord's calculations were as follows: \$3460 (June 1) + \$2200 owed for July 1, 2018 less \$2880 paid June 8 and \$650 paid July 4, 2018. This left a balance owing of \$2130 of unpaid rent to July 31, 2018. The landlord requests a monetary order for that amount.

The landlord also claims damages of \$234.32 for replacing a screen door, cleaning, drywall repair and dumping fees. She does not know the age of the door and has not replaced it. She provided no receipts but only estimates of costs. She said she did not have a condition inspection report done at move-in and move-out and had done some of cleaning herself.

The tenant provided no documents and did not attend to dispute the claim. On the basis of the documentary and solemnly sworn evidence, a decision has been reached.

Analysis

Monetary Order

I find that there are rental arrears in the amount of \$2130 to July 31, 2018. I find the landlord's evidence credible in regard to rent owed as it was well supported by the lease in evidence and emails to the tenant about the rent owed. I find the landlord entitled to a monetary order for unpaid rent.

Regarding her claim for damages, I find awards for compensation are provided in sections 7 and 67 of the *Act*. Accordingly, an applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

Director's orders: compensation for damage or loss

67 Without limiting the general authority in section 62 (3) [*director's authority respecting dispute resolution proceedings*], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party. Section 67 of the Act does *not* give the director the authority to order a respondent to pay compensation to the applicant if damage or loss is not the result of the respondent's non-compliance with the Act, the regulations or a tenancy agreement.

The onus is on the landlord to prove on the balance of probabilities that there is damage caused by this tenant, that it is beyond reasonable wear and tear and the cost to cure the damage. I find insufficient evidence to prove that this tenant damaged the property as there is no condition inspection report at move-in or move-out; there are no receipts to prove costs incurred by the landlord to repair any damage. Also the landlord did not know the age of the screen door in order to ascertain if damages might be the result of reasonable wear and tear pursuant to Residential Policy Guideline 40 which clarifies the useful life of items in residential units to account for reasonable wear and tear. Therefore I find insufficient evidence that the landlord is entitled to compensation for damages. I dismiss this portion of her claim.

Conclusion:

I find the landlord is entitled to a monetary order as calculated below and to retain the security deposit to offset the amount owing. I find the landlord is also entitled to recover filing fees paid for this application.

Calculation of Monetary Award:

Unpaid rent to July 31, 2018	2130.00
Filing fee	100.00
Less security deposit	-1100.00
Total Monetary Order to Landlord	1130.00

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 15, 2019

Residential Tenancy Branch