



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/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 tenants did not attend this hearing, although I waited until 1:50 p.m. in order to enable the tenants to connect with this teleconference hearing scheduled for 1:30 p.m. The landlord's agent attended the hearing and was given a full opportunity to provide affirmed testimony and present evidence.

The landlord's agent testified that on October 19, 2018, a copy of the Application for Dispute Resolution and Notice of Hearing was sent to both the tenants by registered mail to a forwarding address provided by the tenants. The landlord provided a registered mail receipt and tracking numbers in support of service.

Based on the above evidence, I am satisfied that the tenants are 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 tenants.

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 was renewed for an additional one year fixed term beginning on June 1, 2018. The monthly rent was \$1924.00 payable on the 1st day of each month. The tenants paid a security deposit of \$925.00 at the start of the tenancy which the landlord continues to retain. The tenancy ended pursuant to a 10 Day Notice to End tenancy and the landlord was granted an order of possession in a previous decision dated September 17, 2018. The tenants vacated the unit on September 30, 2018.

The landlord is claiming \$5471.00 for unpaid rent for the months of July, August and September 2018. The landlord's agent testified the tenants did not pay rent for this period.

The landlord is claiming \$400.00 in NSF/Late Fee's incurred by the tenants through the period of January to September 2018. The landlord's agent provided a tenant account ledger detailing the amounts charged to the tenants for each month.

The landlord is claiming \$926.00 in liquidated damages as per the lease agreement for the tenants breaching the fixed term lease before the one year term. The landlord's agent testified this was to cover the amount charged to the landlord by the agent for securing a new tenant.

The landlord is claiming \$141.75 for costs incurred by the landlord for garbage removal at the end of the tenancy. The landlord submitted a receipt for this expense. The landlord also submitted pictures of items left behind by the tenants as well as the move-out inspection report documenting the items left behind.

The landlord is claiming \$75.00 for replacing a key and pass which were not returned by the tenants at the end of the tenancy. The landlord submitted the move-out inspection report which documents these items not being 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. 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.

In the previous decision dated September 17, 2018, the landlord had amended their claim for unpaid rent in the hearing to include unpaid rent up until the hearing date. The landlord was granted a monetary order in the amount of \$5871.00. As such, I find the landlord has already been granted a monetary order for unpaid rent for the same period as per this claim. The landlord's claim for unpaid rent is dismissed without leave to reapply.

The landlord is awarded **\$400.00** in NSF/Late Fee's incurred by the tenants through the period of January to September 2018. The tenant account ledger and tenancy agreement supports that the tenants are liable for these costs.

The landlord is awarded **\$926.00** in liquidated damages as per the lease agreement. The tenants breached the fixed term lease by failing to pay rent which resulted in their tenancy ending early. The tenancy agreement signed by the parties stipulates the landlord may require the tenants to pay a sum of \$926.00 as liquidated damages if the tenant terminates the tenancy before the end of the fixed term. I find the amount of \$926.00 as being a reasonable pre-estimate of the loss in order to compensate the landlord for any administrative costs incurred in re-renting the unit. I find this amount is not extravagant and does not constitute a penalty.

The landlord is awarded **\$141.75** for costs incurred for garbage removal. I find the tenants did not leave the rental unit reasonably clean at the end of the tenancy as supported by the pictures and move-out inspection report.

The landlord is awarded **\$75.00** for replacing a key and pass which were not returned by the tenants at the end of the tenancy. I accept the landlord's agent's undisputed testimony and find these items were not returned as required.

The landlord has established an entitlement to an award of **\$1,542.75**.

As the landlord was only partly successful in this application, I find that the landlord is not entitled to recover the \$100.00 filing fee paid for this application.

The landlord continues to hold a security deposit in the amount of \$925.00. 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 **\$617.75**.

Conclusion

Pursuant to section 67 of the *Act*, I grant the landlord a Monetary Order in the amount of **\$617.75**. Should the tenants 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: February 11, 2019

Residential Tenancy Branch