



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

MND MNDC MNSD FF / MNDC MNSD

Introduction

This hearing was convened in response to cross-applications by the parties pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

Landlord:

- a monetary order for damage to the rental unit pursuant to section 67;
- a monetary order for compensation for loss or damage 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.

Tenant:

- a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- authorization to obtain a return of all or a portion of the security deposit pursuant to section 38;

The hearing was conducted by conference call. The tenant did not attend this hearing, although I waited until 1:45 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, to present evidence and to make submissions.

The landlord testified that on December 17, 2018, he sent a copy of the Application for Dispute Resolution and Notice of Hearing to the tenant by registered mail and he sent an evidence package by registered mail to the tenant on January 15, 2019. Registered mail receipts and tracking numbers were provided in support of service.

Based on the above evidence, I am satisfied that the tenant was served with the landlord's 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 landlord. The tenant also ought to have been aware of the hearing date and time as the tenant filed his own application which was scheduled to be heard at the same time.

As the tenant did not appear in this hearing to present any evidence in support of his application and the landlord appeared and was ready to respond, the tenant's application is dismissed without leave to reapply.

Issues

Is the landlord entitled to a monetary order for loss and/or damage?
Is the landlord entitled to retain all or a portion of the security deposit?
Is the landlord entitled to recover the filing fee for this application?

Background and Evidence

The tenancy began on July 15, 2016. The monthly rent was \$700.00 payable on the first of each month. The tenant paid a security deposit of \$350.00 at the start of the tenancy which the landlord continues to hold.

The landlord is claiming loss of rent in the amount of \$700.00 for the month of December 2018 as the tenant failed to provide sufficient notice to end the tenancy. The landlord testified that the tenant gave written notice on November 16, 2018 to end the tenancy effective November 30, 2018. The landlord testified that the tenant vacated the rental unit on December 2, 2018.

The landlord withdrew any additional claims for damage and advised that he was limiting his claim to the amount of the tenant's security deposit.

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 45(1) of the Act sets out that:

A tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that

*(a) is not earlier than one month after the date after the landlord receives the notice, and
(b) is before the day in the month...that rent is payable under the tenancy agreement.*

The tenant provided a notice to the landlord on November 16, 2018 to end the tenancy effective November 30, 2018. The earliest the tenant could have ended the tenancy pursuant to section 45 of the Act was December 31, 2018. The tenant did not provide sufficient notice to end the tenancy therefore the landlord suffered a loss. I accept the landlord's claim for loss of rent in the amount of \$700.00 for the month of December 2018.

The landlord continues to hold a security deposit and pet deposit in the amount of \$350.00. I allow the landlord to retain the security deposit in satisfaction of the monetary award pursuant to section 38 of the Act. As the landlord advised he was limiting his claim to the amount of the tenant's security deposit, I make no further award or orders.

Conclusion

The tenant's application is dismissed without leave to reapply.

The landlord may retain the tenant's security deposit in full.

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: April 09, 2019

Residential Tenancy Branch