Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes   MNDC-S, FF

Introduction

This hearing dealt with applications from both the landlord and the tenants under the *Residential Tenancy Act* (the *Act*). The landlord applied for:

- a monetary order for unpaid rent and 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;
- authorization to recover her filing fee for this application from the tenant pursuant to section 72.

The tenant applied for:

- a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- authorization to recover her filing fee for this application from the landlord pursuant to section 72.

The landlord did not attend. The tenant and her agent attended the hearing via conference call and provided undisputed testimony. The tenant stated that the landlord's application for dispute was received and she was aware of the issues in the landlord's application. The tenant also stated that the landlord was served with the notice of hearing package and the submitted documentary evidence via Canada Post Registered Mail on March 19, 2019. The landlord also submitted documentary evidence in response to the landlord's application for dispute and it was served upon the landlord via Canada Post Registered Mail. The tenant was unable to provide any details for service. I accept the undisputed testimony of the tenant and find that the landlord was properly served via Canada Post Registered Mail. I also find that the

tenant was properly served with the landlord's notice of hearing package. On this basis, I find that both parties have been sufficiently served as per section 90 of the Act.

On the landlord's application for dispute, after waiting 48 minutes past the start of the scheduled hearing the landlord's application is dismissed. As the tenant had attended in response and was aware of the issues in the landlord's application, I find that it is dismissed without leave to reapply.

The hearing shall proceed on the tenant's application only.

Issue(s) to be Decided

Is the tenant entitled to a monetary order for money owed or compensation for damage or loss and recovery of the filing fee?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the both the tenant's claim and the landlord's cross claim and my findings around each are set out below.

This tenancy began on September 1, 2017 on a fixed term ending on August 31, 2018 as per the submitted copy of the signed tenancy agreement dated June 29, 2017 for a partially furnished rental unit. The monthly rent was $975.00 and a security deposit of $700.00 was paid.

The tenant seeks a monetary claim of $487.50 which consists of compensation for the landlord's receipt of payment for rent for the period December 15 to 31, 2017, twice. The tenant provided undisputed testimony that rent for the period December 1 to 31, 2017 of $975.00 was paid to the landlord. The tenant also argues that in a previous hearing and decision dated January 10, 2019 the landlord provided evidence that a new tenancy began on December 15, 2017 in which the landlord received rent from a new tenant. The tenant argues that the landlord should not be able to receive rent twice for the same period of time as the landlord was successful in finding a new tenant.

In support of this claim the tenant has submitted a copy of a signed tenancy agreement provided by the landlord in a previous hearing. The agreement provides for a tenancy to begin on December 15, 2017 for rent at $875.00.

Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

In this case, I accept the undisputed evidence of the tenant and find that the landlord was able to re-rent the unit for the period December 15 to 31, 2017. The tenant provided undisputed testimony that rent for all of December 2017 was paid of $975.00. The tenant also provided undisputed testimony that the landlord received $875.00 per month ($437.50 for the period December 15 to 31, 2017) from a new tenant. As such, I find that the tenant has established a monetary claim of $437.50 as opposed to the amount filed of $487.50. The landlord was only able to re-rent the unit at a lower amount of $875.00 per month, providing for a difference of $50.00. This is the amount I credit to the landlord. The tenant was responsible for total monthly rent of $975.00 not $875.00.

The tenant having been successful in the application for dispute is entitled to recovery of the $100.00 filing fee.

Conclusion

The tenant is granted a monetary order for $537.50.

This order must be served upon the landlord. Should the landlord fail to comply with the order, the 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: April 23, 2019

_____
Residential Tenancy Branch