



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MNSD, FF

Introduction

This hearing was convened in response to an application by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. A Monetary Order for unpaid rent - Section 67;
2. An Order to retain the security deposit - Section 38; and
3. An Order to recover the filing fee for this application - Section 72.

Tenant MD did not attend the hearing. The Landlord and Tenant KM were each given full opportunity to be heard, to present evidence and to make submissions.

Preliminary Matter

The Landlord states that it cannot confirm that Tenant MD was served with application for dispute resolution, notice of hearing and evidence package.

Section 59(3) of the Act provides that a person who makes an application for dispute resolution must give a copy of the application to the other party within 3 days of making it. As the Landlord was unable to provide evidence that Tenant MD was given a copy of the application for dispute resolution I dismiss the claims against Tenant MD with leave to reapply.

It is noted that the Landlord provided the same address for each Tenant named on the application form and that this address is not the forwarding address provided on the move-out inspection report. The Landlord does not know where the address on the

application came from as it was completed by another person employed by the Landlord. The Tenant KM confirms that the Tenants' address on the Landlord's application does not belong to her and that she provided her forwarding address to the Landlord on the move-out report. The Landlord states that the email for the Tenant as set out on the application belongs to the occupants at that address.

Issue(s) to be Decided

Is the Landlord entitled to the monetary amounts claimed?

Background and Evidence

The following are agreed facts: The tenancy started on April 1, 2018 on a fixed term to end March 31, 2019. Rent of \$1,500.00 was payable on the first day of each month. At the outset of the tenancy the Landlord collected \$750.00 as a security deposit.

The Landlord states that the tenancy was entered into with a different landlord and that the Landlord took over the tenancy in May 2018. The Landlord states that according to their financial records the amount of \$1,050.00 was entered as the security deposit collected and that \$750.00 of that amount was for the pet deposit. The Landlord provides a copy of the financial records. The Tenant KM states that her copy of the tenancy agreement indicates that \$1,000.00 was collected as a pet deposit. It is noted that the amount of the security deposit appears to have originally been set out as \$1,000.00 and that this was crossed out and exchanged with \$750.00 then initialled. The Landlord does not know who the initials belong to.

The Landlord states that a move-in inspection was conducted with Tenant MD by the previous landlord but that no date was set out on the inspection report and that neither Tenant signed the report. The Landlord states that three items were noted as damaged and that Tenant MD made a handwritten note on the move-in report that he agreed with the report. The Landlord states that a copy of the move-in report was provided to both the RTB and the Tenant KM. Tenant KM confirms having received a copy of the move-

in report for this dispute proceeding. The Landlord states that the keys to the unit were returned by Tenant KM when this Tenant attended the move-out inspection alone. Tenant KM states that she did not sign the move-out inspection report as the damages noted by the Landlord on the move-out report were damages that were present at move-in. Tenant KM states that the Landlord was informed after the move-in of the damages present and that the Landlord only made promises to repair. The Tenant KM states that the Landlord never did any repairs. The Landlord confirms that they have no direct knowledge of the state of the unit at move-in

The Landlord states that Tenant KM did not give any notice to end the tenancy. The Landlord states that in January 2019 it was discovered by the Landlord that unknown persons other than the Tenants were residing in the unit. The Landlord states that no rent was paid on January 1, 2019 and that the Landlord served the Tenants with a 10 day notice to end tenancy for unpaid rent. The Landlord states that the rent for January 2019 was paid within the time required. The Landlord does not indicate who paid this rental amount. The Landlord states that the rent was not paid on February 1, 2019 and that on February 19, 2019 the Landlord served another 10 day notice to end tenancy for unpaid rent by posting the notice on the door of the unit. The Landlord states that no rents were received for February or March 2019. The Landlord is not sure when the occupants of the unit moved out and that Tenant KM returned all the keys to the unit on March 10, 2019.

The Landlord claims rent of \$1,500.00 for February 2019 and \$1,500.00 for March 2019. The Landlord states that due to the damages left by the Tenants the unit had to undergo renovations. The Landlord states that these renovations were commenced sometime towards the end of March 2019 and that the Landlord was not able to rent the unit. The Landlord states that the unit is still not able to be rented. The Landlord states that no claim for damages is being pursued against the Tenants for unknown reasons.

The Tenant KM states that she moved out of the unit on November 1, 2018 as the unit had many damages from before the tenancy started and that it was unsafe for her child. The Tenant KM states that she called the Landlord to inform them that she was moving out and that the Landlord verbally informed her that a new tenancy application would be provided under the door of the unit. The Tenant states that this never occurred.

The Landlord states that he cannot recall if Tenant KM called him in relation to moving out of the unit. The Landlord states that he only received a phone call from Tenant KM asking how to be removed from the tenancy agreement. The Landlord states that Tenant KM never informed the Landlord in writing of moving out. Tenant KM confirms that no notice to end the tenancy was provided in writing.

Tenant KM states that she was not at the unit between November 1, 2018 and March 10, 2019 and that she went to the unit to collect her mail and was informed by the Landlord that Tenant MD had been evicted. The Tenant states that she has no idea when Tenant MD moved out.

Analysis

Section 26 of the Act provides that a tenant must pay the rent when and as provided under the tenancy agreement whether or not the landlord complies with this Act, the regulations or the tenancy agreement. Rent is payable until a tenancy ends. Section 44(1)(d) of the Act provides that a tenancy ends when the tenant vacates or abandons the rental unit. Section 37(2)(b) of the Act provides that when a tenant vacates a rental unit, the tenant must give the landlord all the keys or other means of access that are in the possession or control of the tenant and that allow access to and within the residential property. As Tenant KM did not provide any written notice to end the tenancy, I find that the tenancy did not end when Tenant KM moved out of the unit. As the tenancy agreement continued with Tenant KM as a tenant on the tenancy agreement, as the undisputed evidence is that the unit was being occupied until Tenant KM returned the keys on March 10, 2019 with no rent paid for either February or March

2019, I find that Tenant KM is liable for unpaid rent of **\$1500.00** for February 2019 and **\$500.00** for the period March 1 to 10, 2019 inclusive. The March 2019 entitlement is based on a per diem rent of \$50.00 (1,500.00/30 days; \$50.00 x 10 days).

Section 7 of the Act provides that where a tenant does not comply with the Act, regulation or tenancy agreement, the tenant must compensate the landlord for damage or loss that results. Section 37 of the Act provides 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. Although the Landlord did not provide a copy of the move-in report to the RTB, given Tenant KM's evidence that it received a copy of that report and as Tenant KM did not dispute that Tenant MD wrote a note on that report indicating agreement to three damaged items, and given the copy of the move-out report noting several damaged items, I find on a balance of probabilities that the unit was left with damages beyond wear and tear at the end of the tenancy and that the unit therefore could not be rented until the end of March 2019. As a result I find that the Landlord has substantiated an entitlement to lost rental income for the period March 11 to March 30, 2019 in the amount of **\$1,000.00**. This entitlement is based on a per diem rent of \$50.00 (1,500.00/30 days; \$50.00 x 20 days). As the Landlord has been successful with its application I find that the Landlord is entitled to recovery of the **\$100.00** filing fee for a total entitlement of **\$3,100.00**.

Given the financial records and as the Tenant did not give evidence of having personally paid the deposits to the Landlord, I find on a balance of probabilities that the Landlord only collected \$750.00 as the pet deposit. Setting the combined security and pet deposit of **\$1,500.00** plus zero interest off the Landlord's entitlement of **\$3,100.00** leaves **\$1,600.00** owed to the Landlord. As the application has been dismissed with leave against Tenant MD I restrict the monetary order to Tenant KM.

Conclusion

I Order the Landlord to retain the security and pet deposit plus zero interest of \$1,500.00 in partial satisfaction of the claim and I grant the Landlord an order under Section 67 of the Act for **\$1,600.00**. If necessary, this order may be filed in the Small Claims 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 Act.

Dated: May 15, 2019

Residential Tenancy Branch