



Dispute Resolution Services

Page: 1

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 compensation for unpaid rent, damage and/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;
- authorization to recover the filing fee for this application pursuant to section 72.

The hearing was conducted by conference call. The tenant did not attend this hearing, although I waited until 2:00 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 and present evidence.

The landlord testified that on February 8, 2019, she personally served the tenant with a copy of the Application for Dispute Resolution and Notice of Hearing at the rental unit.

Based on the above evidence, I am satisfied that the tenant was personally served with the Application for Dispute Resolution and Notice of Dispute Resolution Hearing pursuant to section 89 of the Act. The hearing proceeded in the absence of the tenant.

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 of the tenant's security deposit in partial satisfaction of the monetary award requested?

Is the landlord entitled to recover the filing fee for this application from the tenant?

Background and Evidence

The tenancy began on October 1, 2018 with a monthly rent of \$1380.00 payable on the 1st day of each month. The tenant paid a security deposit of \$690.00 at the start of the tenancy which the landlord continues to hold. In a previous Residential Tenancy Branch decision dated December 24, 2018 the landlord was granted an order of possession.

The landlord is claiming loss of rent for the months of January and February 2019. The landlord testified that the tenant failed to vacate after being served with the order of possession. The landlord testified that she had to hire a bailiff to remove the tenant and his possessions which was done approximately at the end of February 2019. The landlord testified the tenant did not pay any rent for this period of over holding.

The landlord is claiming \$207.85 in electrical expenses occurred due to the tenant's power being cut off by BC Hydro due to safety concerns. The landlord testified the tenant was stealing power. The landlord submitted a letter from BC Hydro stating the power was being cut off and an invoice for the electricians service call.

The landlord is also claiming a \$120.00 fee to obtain a writ of possession and \$1500.00 retainer fee to secure a court bailiff. The landlord testified the actual cost was much higher. No receipt was provided.

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.

I accept the landlord's uncontested testimony and find the landlord has suffered a loss of rent for January and February 2019 as claimed in the amount of \$2760.00 as the tenant failed to vacate the rental unit or pay over holding rent.

The landlord's claim for the electrical expense is dismissed. The landlord provided insufficient evidence to support that the power was cut off as a result of the tenant's actions of stealing power.

The landlord's claim for the bailiff and writ of possession fees is also dismissed as the landlord failed to submit any receipt or invoice supporting this expense.

As the landlord was still partly successful in this application, I find that the landlord is entitled to recover the \$100.00 filing fee paid for this application for a total monetary award of \$2860.00.

The landlord continues to hold a security deposit in the amount of \$690.00. I allow the landlord to retain the security deposit and pet 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 \$2170.00.

Conclusion

Pursuant to section 67 of the *Act*, I grant the landlord a Monetary Order in the amount of \$2170.00. Should the tenant 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: May 13, 2019

Residential Tenancy Branch