



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND MNR 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 and damage 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 her filing fee for this application from the tenant pursuant to section 72.

The hearing was conducted by conference call. All named parties attended the hearing and were given a full opportunity to provide affirmed testimony, to present evidence and to make submissions. The tenant acknowledged receipt of the landlord's application for dispute resolution including the evidence on file.

Issues

Is the landlord entitled to a monetary award for compensation for unpaid rent and damage 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 & Evidence

The tenancy originally began on January 15, 2017 for a one year fixed term set to end on January 15, 2018. The tenancy continued on a month-to-month basis after this date. On December 15, 2018 the tenants provided written notice to end the tenancy effective January 15, 2019. The tenants vacated on January 15, 2019 and paid rent for January 1, 2019 to January 15, 2019. The monthly rent at this time was \$1274.00 and the rent under the tenancy agreement was payable on the 1st of each month. The tenants paid

a security deposit of \$625.00 and a pet deposit of \$625.00 at the start of the tenancy. The landlord continues to retain a total of \$887.00 of these deposits and the balance was returned to the tenants.

The landlord is claiming unpaid rent for January 15-31, 2019 in the amount of \$637.00. The landlord claims the tenants did not provide sufficient notice and that he advised the tenants that the Notice was not sufficient. The landlord testified that he attempted to re-rent the unit for January 15, 2019 but was not able to do so until February 1, 2019.

The landlord is claiming an amount of \$250.00 for compensation for damage to a kitchen wall. The landlord testified the tenants fixed a hole in the wall but did not paint it. The landlord submitted an estimate for this repair work. The landlord testified that he has since had the repair work completed but did not submit a final invoice. The landlord testified that the final invoice was much higher as he ended up having to repaint the entire kitchen.

The tenant argues that his lease started on January 15th so there should be no issue with it ending on January 15th exactly two years after. The tenant argues that the landlord received a full month's notice regardless of when the rent was paid.

The tenant argues that he fixed the hole in the wall by patching it to the point of getting it ready for painting. The tenant argues the painting should be the landlord's responsibility. The tenant argues the landlord only submitted a blanket quote which does not even contain any company logo.

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.

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.

The tenants provided a notice to the landlord on December 15, 2018 to end the tenancy effective January 15, 2019. The earliest possible effective date for the tenants notice to end this periodic tenancy pursuant to section 45 of the Act was January 31, 2019. The tenants 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 \$637.00 for the period of January 15-31, 2019. I accept the landlord's testimony that he attempted to mitigate this loss by re-renting the unit as soon as possible.

I also accept the landlord suffered a loss resulting from having to paint a patched hole in the kitchen. The tenant acknowledged causing this damage. The tenant's argument that painting should be the landlord's responsibility is simply incorrect. It is the tenants' responsibility to leave a rental unit undamaged and leaving a hole patched but unpainted is still damaged. However, I find the landlord has not submitted sufficient proof of this loss as the landlord only submitted a quote. The landlord did not submit an invoice reflecting a breakdown of the final cost nor any evidence to support that he was required to repaint the entire kitchen as a result of this patched hole. As I have found the landlord has suffered a loss I award the landlord only the nominal amount of \$25.00 for this portion of the claim.

As the landlord was for the most part successful in this application, I find that the landlord is entitled to recover the \$100.00 filing fee paid for this application from the tenants.

Total entitlement for Landlord: \$762.00 (\$637.00 + \$25.00 + 100.00)

The landlord continues to hold a total deposit amount of \$887.00. The landlord is permitted to retain \$762.00 from this retained amount in full satisfaction of the monetary award and the balance of \$125.00 is to be returned to the tenants forthwith.

The tenants are granted a Monetary Order in the amount of \$125.00.

Conclusion

Pursuant to section 67 of the *Act*, I grant the tenants a Monetary Order in the amount of \$125.00. Should the landlord 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 14, 2019

Residential Tenancy Branch