



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR MNDC MNSD

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- a monetary order for unpaid rent pursuant to section 67;
- a monetary order 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;

The hearing was conducted by conference call. All named parties attended the hearing and were given a full opportunity to provide affirmed testimony and present evidence. NO issues were raised with the service of the application and evidence submissions on file.

Issues

Is the landlord entitled to a monetary award for unpaid rent and compensation for 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?

Background and Evidence

The tenancy began June 2018 with a monthly rent of \$725.00 payable on the 1st day of each month. The tenant paid a deposit of \$400.00 at the start of the tenancy which the landlord continues to hold. The landlord testified that \$350.00 of this was for the security deposit and \$50.00 was a non-refundable deposit. The landlord testified the non-refundable deposit was not for anything specific.

The landlord is claiming unpaid rent and loss of rent for February 2019 and a portion of March 2019. The landlord testified that the tenant did not provide proper notice to end the tenancy. The landlord testified that on January 19, 2019 the tenant verbally advised her that she was vacating at the end of January 2019. The landlord testified that she advised the tenant this was not sufficient notice and that she required notice in writing. Prior to this, they had a verbal discussion in December 2018 by which the tenant informed her that she might be moving. The landlord testified the unit was re-rented effective March 23, 2019.

The landlord was also seeking unpaid utilities; however, in the hearing the landlord acknowledged that the tenant's rent was inclusive of all utilities.

The tenant argued that the landlord was aware she was leaving as a result of several verbal conversations they had. The tenant was also arguing that the landlord's right to claim against the deposit was extinguished as the landlord failed to complete move-in or move-out inspections.

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.

A notice given under this section must be in writing and comply with the form and content requirements of section 52 of the Act.

The tenant did not provide any written notice to the landlord to end this tenancy. Even if the tenant's verbal notice of January 19, 2019 were to be accepted, the earliest possible effective date to end this periodic tenancy pursuant to section 45 of the Act was February 28, 2019. The tenant did not provide sufficient notice to end the tenancy

therefore the landlord suffered a loss. The landlord is awarded \$725.00 for unpaid rent for February 2019.

The landlord's claim for loss of March 2019 rent is dismissed. Even though the notice was not provided in writing, I find the landlord was aware as of January 19, 2019 that the tenant was ending the tenancy which could have legally been ended effective February 28, 2019.

The landlord's claim for unpaid utilities is dismissed as utilities were included in the monthly rent payable under the tenancy agreement.

A landlord is not permitted to charge a prospective tenant for accepting an application or a non-refundable deposit unless it is for an item provided for under section 7 of the Regulations. Therefore, I find the landlord continues to hold a security deposit and a refundable deposit in the total amount of \$400.00. I allow the landlord to retain or offset this amount 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 \$325.00.

The tenant's argument with respect to the landlord's alleged failure to complete condition inspection reports under the Act was not relevant to this dispute. If a landlord has extinguished his or her right to claim against a deposit, that only applies for a claim against the deposit for "damage" to the rental unit. In this case, the landlord had a claim for unpaid rent and not damages. The landlord's application was also filed within 15 days of the earliest effective date of February 28, 2019 on which the tenancy ended.

Conclusion

Pursuant to section 67 of the Act, I grant the landlord a Monetary Order in the amount of \$325.00. 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: June 24, 2019

Residential Tenancy Branch