



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR MNDC MNSD FF / MNSD

This hearing was convened in response to cross-applications by the parties pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

Landlord:

- 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;
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

Tenant:

- authorization to obtain a return of all or a portion of the security deposit 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, to present evidence and to make submissions. The parties confirmed service of the respective applications and evidence on file.

Preliminary Issue

After filing the original application, the landlord uploaded evidence to the file by which he sought to include a claim for damages and increase the amount of the monetary claim. The landlord did not file an amended application as required by the Rules of Procedure. Therefore, the landlord’s application was restricted to the remedies sought in the original application and monetary amount of \$3089.26.

Issues

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

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?

Is the tenant entitled to a return of all or a portion of the security deposit?

Background & Evidence

The parties entered into a one year fixed term tenancy beginning on September 1, 2018 and set to end on August 31, 2019. The monthly rent was \$2600.00 with a discounted rate of \$2400.00 if paid in advance. The tenant ended the lease early and vacated the unit on March 31, 2019. The lease allowed for the tenant to end the lease early with at least 2 months' notice if the event the tenant purchased another property. The tenant paid a security deposit of \$1200.00 and a pet deposit of \$1200.00 at the start of the tenancy which the landlord continues to hold. The landlord's application to retain the security and pet deposit was filed on April 12, 2019 within the 15 day time period after the end of the tenancy as required under the Act.

The landlord is claiming \$2400.00 for unpaid rent for April 2019. The landlord's agent testified that the tenant did not provide any notice to end the tenancy early. The landlord's agent testified that they only heard rumours that the tenant was not staying until the end of the fixed term and was leaving at the end of March 2019. The landlord therefore started advertising the unit on February 17, 2019. The landlord submitted receipts of various advertisements placed on and after this date. The landlord's agent testified that they were able to rent the unit effective July 1, 2019. The landlord's agent testified that the unit was advertised for the same rate paid by the tenant.

The landlord is claiming \$636.76 for unpaid utilities bills which was not disputed by the tenant.

The landlord is also claiming \$52.50 in advertising fees incurred to re-rent the unit.

The tenant testified that the tenancy agreement permitted her to end the lease early if she purchased a property. The tenant testified that unfortunately the subjects from her offer were not removed until February 14, 2019. She immediately provided notice by e-mail to the landlord to end the lease in 45 days on March 31, 2019. The tenant argues

that the landlord should have been able to re-rent the unit in 45 days due to the low vacancy rates in the city. The tenant submits the landlord had at least three showing while she was still in the unit.

The tenant does not dispute the unpaid utilities amount claimed by the landlord.

The tenant argues the advertising expense should be a cost of doing business for the landlord.

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.

As per section 45 of the Act, a tenant may not end a fixed term tenancy earlier than the date specified in the tenancy agreement as the end of the fixed term unless the landlord has breached a material term of the tenancy agreement.

In this case the tenancy agreement permitted the tenant to end the tenancy early with 2 months' notice.

I find the tenant did provide notice to the landlord by e-mail on February 14, 2019. I accept the tenant's testimony that some notice was provided over the landlord's testimony that no notice was provided at all. I find it not plausible that the landlord would advertise the unit for rent based solely on rumours. Also, the fact that the landlord first advertised the unit on February 17, 2019 is more in line with the tenant's testimony that she provided notice 3 days prior to this date. However, the tenant failed to provide the 2 months' notice as required by the tenancy agreement.

The tenant provided a notice to the landlord on February 14, 2019 to end the tenancy effective March 31, 2019. The earliest possible effective date for the tenant's notice to end this tenancy in compliance with the tenancy agreement was April 30, 2019. The tenant did not provide sufficient notice to end the tenancy therefore the landlord suffered a loss of rent for the month of April 2019. I accept the testimony and evidence submitted by the landlord in finding the landlord attempted to mitigate losses by advertising the unit for rent as soon as possible. The tenant argued the landlord should have been able to rent the unit sooner due to low vacancy rates but failed to submit any evidence in support of this claim. I accept the landlord's claim for loss of rent for the month of April 2019. The landlord is awarded **\$2400.00**.

I accept the landlord's claim for unpaid utilities which was not disputed by the tenant. The landlord is awarded **\$636.76**.

The landlord's claim for advertising costs is dismissed. The lease allowed for the tenant to end the tenancy early upon providing 2 months' notice. Although the tenant only provided 45 days' notice, the landlord would still have incurred this expense.

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.

The landlord continues to hold a security deposit and pet deposit in the amount of \$2400.00. I allow the landlord to retain the security and pet deposit in partial satisfaction of the monetary award pursuant to section 38 of the Act.

Net entitlement for Landlord: \$736.76 ($\$2400.00 + \$636.76 + \$100.00 - \2400.00)

As the landlord is entitled to retain the tenant's security and pet deposit in full, the tenant's application seeking return of all or a portion of the security and pet deposit is dismissed.

Conclusion

Pursuant to section 67 of the *Act*, I grant the landlord a Monetary Order in the amount of **\$736.76**. 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: July 18, 2019

Residential Tenancy Branch