



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MNSD, FFL

Introduction

On October 24, 2019, the Landlord submitted an Application for Dispute Resolution under the *Residential Tenancy Act* (“the Act”) for money owed or compensation for damage or loss; to keep the security deposit; and to recover the cost of the filing fee. On October 29, 2019 the Landlord amended his application to increase the amount of the monetary claim.

The matter was set for a conference call hearing at 1:30 p.m. on this date. The Landlord and Tenant attended the teleconference hearing.

The Landlord and Tenant were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing. The Tenant confirmed that he received a copy of the Landlord’s evidence.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary and Procedural Matters

At the start of the hearing the Landlord clarified that he was seeking to keep the security deposit in addition to his claim for a loss of October 2019 rent. The Landlord mentioned that the tenant failed to return the unit keys. The Landlord’s application does not include a specific claim for anything other than a loss of rent and to keep the security deposit.

Section 59 of the Act provides that an application for dispute resolution must include the full particulars of the dispute that is to be the subject of the dispute resolution

proceedings. I find that the Landlords application did not clearly identify any other claims, and the Landlords claim is limited to a loss of rent and to keep the security deposit.

Issues to be Decided

- Is the Landlord entitled to a monetary order to recover unpaid rent?
- Is the Landlord entitled to keep the security deposit towards unpaid rent?
- Is the Landlord entitled to recover the cost of the filing fee?

Background and Evidence

The Landlord and Tenant testified that the tenancy began on September 8, 2019, on a month to month basis. The parties testified that they had spoken about entering into a fixed term tenancy agreement; however, an agreement was not reached. Rent in the amount of \$1,750.00 was to be paid to the Landlord by the first day of each month. The Tenant paid the Landlord a security deposit of \$875.00. Both parties testified that the Tenant moved out of the rental unit on October 1, 2019.

The Landlord testified that the Tenant ended the tenancy and moved out of the rental unit without giving the proper written notice required under section 45(1) of the Act.

The Landlord testified that the earliest date the Tenant could legally end the tenancy is October 31, 2019. The Landlord testified that he did not re-rent the unit until December 1, 2019 and he did not receive any rent for the months of October 2019 and November 2019.

The Landlord is seeking compensation of \$1750.00 for a loss of October 2019 rent.

The Landlord asks to keep the security deposit in the amount of \$875.00 in partial satisfaction of his claim.

In reply, the Tenant testified that he sent the Landlord a text message five days after he moved into the unit expressing concerns with the unit. The Tenant submitted that he offered options to the Landlord in an effort to resolve the dispute.

The Tenant testified that the Landlord failed to try and re-rent the unit by advertising the unit. The Tenant testified that he returned the unit keys to the Landlord using registered mail sometime in October 2019.

Analysis

Residential Tenancy Policy Guideline # 3 Claims for Rent and Damages for Loss of Rent provides the following information:

The damages awarded are an amount sufficient to put the landlord in the same position as if the tenant had not breached the agreement. As a general rule this includes compensating the landlord for any loss of rent up to the earliest time that the tenant could legally have ended the tenancy.

Residential Tenancy Policy Guideline # 5 Duty to Minimize Loss provides the following information:

Where the tenant gives written notice that complies with the Legislation but specifies a time that is earlier than that permitted by the Legislation or the tenancy agreement, the landlord is not required to rent the rental unit or site for the earlier date. The landlord must make reasonable efforts to find a new tenant to move in on the date following the date that the notice takes legal effect.

Based on the evidence before me, the testimony of the Landlord and Tenant, and on a balance of probabilities, I find that the Tenant ended the tenancy without giving the Landlord the proper written notice required under section 45(1) of the Act.

I find that the Tenant is responsible to pay the rent until October 31, 2019; the earliest date that the Tenant could have legally ended the tenancy. I find that the Landlord was not required to attempt to find a new Tenant for the month of October 2019.

I award the Landlord the amount of \$1,750.00 for a loss of October 2019 rent.

I order that the Landlord can keep the security deposit in the amount of \$875.00 in partial satisfaction of the Landlord's award for a loss of rent.

Section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. I order the Tenant to repay the \$100.00 fee that the Landlord paid to make application for dispute resolution.

I find that the Landlord has established a total monetary claim of \$1,850.00 comprised of \$1,750.00 for October 2019 rent and the \$100.00 fee paid by the Landlord for this hearing. After setting off the security deposit of \$875.00 towards the award of \$1,850.00, I find that the Landlord is entitled to a monetary order in the amount of \$975.00. This monetary order may be filed in the Provincial Court (Small Claims) and

enforced as an order of that court. The Tenant is cautioned that costs of such enforcement are recoverable from the Tenant.

Conclusion

The Tenant ended the tenancy early without proper notice which resulted in the Landlord suffering a loss of rent for October 2019. The Landlord has established a monetary claim in the amount of \$1,850.00. I order that the Landlord can keep the security deposit in the amount of \$875.00 in partial satisfaction of the Landlord's claim.

I grant the Landlord a monetary order in the amount of \$975.00.

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: December 10, 2019

Residential Tenancy Branch