



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND MNR MNDC MNSD FF

Introduction

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, damage and 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 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;
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

The hearing was conducted by conference call. The tenant did not attend this hearing, although I waited until 1:50 p.m. in order to enable the tenant to connect with this teleconference hearing scheduled for 1:30 p.m. The landlord’s agent attended the hearing and was given a full opportunity to provide affirmed testimony and present evidence.

The landlord testified that on August 29, 2019, a copy of the Application for Dispute Resolution and Notice of Hearing was sent to the tenant by registered mail. The landlord provided a registered mail receipt and tracking number in support of service.

Based on the above evidence, I am satisfied that the tenant was deemed served with the Application for Dispute Resolution and Notice of Dispute Resolution Hearing pursuant to sections 89 & 90 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 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 16, 2018 with a monthly rent of \$1200.00 payable on the 1st day of each month. The tenant paid a security deposit of \$600.00 and a pet deposit of \$600.00 at the start of the tenancy which the landlord continues to hold.

The landlord submitted a "monetary order worksheet" which provides a detailed breakdown of the landlord's claims totaling \$3841.85. The landlord also submitted a move-in and move-out condition inspection report plus various pictures of the rental unit at the end of the tenancy as evidence.

The landlord testified that the tenant left the rental unit in a state of uncleanliness and disrepair and the landlord is claiming \$400.00 for this expense. An estimate was provided. The landlord testified the actual invoice came in well above the estimate. The landlord did not submit the actual invoice. The landlord was also claiming \$2131.50 for repair and painting work. The landlord testified the actual invoice came in lower at \$1881.60 but did not submit a copy of the final bill. The landlord testified that she reviewed the file various times and knew that only estimates had been provided but at the same time stated that she just realized on the day of the hearing that only estimates were provided.

The landlord is also seeking \$1200.00 in unpaid rent for the month of August 2019. The landlord testified that the tenant provided notice on July 2, 2019 with an effective move-out date of July 31, 2019. The landlord testified the tenant vacated the unit on August 1, 2019. The landlord submits they were unable to re-rent the unit for August 2019 due

to the insufficient notice and fact that the rental unit needed to be cleaned and repair work completed.

The landlord is also seeking \$10.00 to recover the mailing cost of this application.

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.

Pursuant to section 67 of the Act, if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

Residential Tenancy Policy Guideline #16 "Compensation for Damage or Loss" provides the following guidance:

The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. In order to determine whether compensation is due, the arbitrator may determine whether:

- a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
- loss or damage has resulted from this non-compliance;
- the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
- the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

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.

I find that the tenant did not leave the rental unit reasonably clean and undamaged and this is supported by the landlord's evidence submissions and undisputed testimony. However, the landlord testified that the actual amount of the cleaning and repair work invoices differed from the estimates provided. The landlord failed to submit evidence in

support of the actual amounts of the value of the loss suffered. As I cannot determine or verify the amount of the actual loss, the landlord's claim for cleaning and repair work is dismissed without leave to reapply.

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 provided a notice to the landlord on July 2, 2019 to end the tenancy effective July 31, 2019. The earliest possible effective date for the tenant's notice to end this periodic tenancy pursuant to section 45 of the Act was August 31, 2019. The tenant did not provide sufficient notice to end the tenancy therefore the landlord suffered a loss. I accept that the landlord could not mitigate this loss due to the insufficient notice and the cleaning and repair work that was required before re-renting the unit. I accept the landlord's claim for loss of rent in the amount of \$1200.00 for the month of August 2019.

The act does not provide for costs of filing an application aside from the \$100.00 filing fee. The landlord's claim for mailing costs is dismissed.

As the landlord was only partly successful in this application, I find that the landlord is not entitled to recover the filing fee paid for this application.

The landlord continues to hold a security deposit and pet deposit in the total amount of \$1200.00. I allow the landlord to retain the security deposit and pet deposit in full satisfaction of the monetary award pursuant to section 38 of the Act.

As the tenant failed to attend this hearing and the landlord has been permitted to retain the tenant's security and pet deposit in full, the tenant's application is dismissed in its entirety without leave to reapply.

Conclusion

The landlord is awarded \$1200.00 for loss of rent. The rest of the landlord's application is dismissed without leave to reapply.

The tenant's application is dismissed without leave to reapply.

The landlord continues to hold a security deposit and pet deposit in the total amount of \$1200.00. I allow the landlord to retain the security deposit and pet deposit in full satisfaction of the monetary award pursuant to section 38 of the Act. The remainder

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 16, 2019

Residential Tenancy Branch