



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR MNSD FF / MNDC MNSD RPP 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 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:

- a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- authorization to obtain a return of all or a portion of the security deposit pursuant to section 38, including double the amount;
- authorization to recover the filing fee for this application from the landlord 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.

Issues

Is the landlord entitled to a monetary award for unpaid rent and to recover the filing fee for this application from the tenant?

Is the landlord entitled to retain the security deposit?

Is the tenant entitled to a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement?

Is the tenant entitled to return of all or a portion of the security deposit pursuant to section 38, including double the amount?

Is the tenant entitled to recover the filing fee for this application from the landlord?

Background and Evidence

The tenancy began on May 15, 2019. The monthly rent was \$1600.00 payable on the 1st day of each month. A security deposit of \$800.00 was paid at the start of the tenancy which the landlord continues to retain. The tenant was issued a One Month Notice to End Tenancy for Cause on October 29, 2019 with an effective date of November 30, 2019. The tenant vacated the rental unit on November 10, 2019.

The landlord's application is for compensation for outstanding November 2019 rent in the amount of \$1600.00. The landlord testified the tenant failed to pay rent as due on November 1, 2019.

The tenant acknowledged rent was not paid but claims the landlord previously attempted to evict him without proper notice, harassed him, his daughter and his girlfriend so he had to get out. The tenant claims the landlord's daughter moved in on November 10, 2019 and paid rent for the month of November.

In reply, the landlord testified that her daughter did not move in until December 2019.

The tenants' application is for monetary compensation for one months rent for harassment, return of the security deposit (including double the amount as a penalty), and moving expenses.

The landlord denied the tenant's claims of harassment. The landlord acknowledged providing notice to evict by text message but testified this was later corrected and proper notice was provided.

Analysis

Section 26(1) of the Act requires that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

The only Notice to End tenancy on file was a copy of the One Month Notice submitted by the tenant. The One Month Notice had an effective date of November 30, 2019; accordingly, the tenant was still responsible to pay November rent.

I accept the landlord's claim for unpaid rent in the amount of **\$1600.00** for the month of November 2019.

As the landlord was successful in his application, I find that the landlord is entitled to recover the **\$100.00** filing fee paid for his application.

I allow the landlord to retain the \$800.00 security deposit in partial satisfaction of the monetary award.

The landlord is therefore granted a monetary order in the amount of \$900.00 (\$1600.00 + \$100.00 - \$800.00).

Pursuant to section 28 of the Act, a tenant is entitled to quiet enjoyment of the rental unit including but not limited to rights to the following:

- reasonable privacy;
- freedom from unreasonable disturbance;
- exclusive possession of the rental unit, subject to the landlord's rights contained in section 29; and
- use of common areas for reasonable and lawful purposes, free from significant interference.

Residential Tenancy Policy Guideline #6 "Entitlement to Quiet Enjoyment" provides the following guidance:

In order to prove a breach of the entitlement to quiet enjoyment, the tenant must show that there has been substantial interference with the ordinary and lawful enjoyment of the rental premises. This includes situations in which the landlord has directly caused

the interference or was aware of the interference but failed to take reasonable steps to correct it. It is also necessary to balance the tenant's right to quiet enjoyment with the landlord's right and responsibility to maintain the premises. Temporary discomfort or inconvenience does not constitute a basis for a breach under this section.

The tenant provided insufficient evidence either by way of oral testimony or written submissions to support a finding that there has been substantial interference with his ordinary and lawful enjoyment of the rental premises. The tenant made reference to text message evidence, but none was submitted as evidence.

The tenant's claim for compensation for One Months rent for harassment is dismissed without leave to reapply.

The landlord filed her application to retain the tenant's security deposit on November 22, 2019 which is within 15 days of the end of the tenancy or receipt of a forwarding address as required under the section 38 of the Act. The landlord was successful in her application to retain the tenant's security deposit in full for unpaid rent. As such, the tenant's claim for return of the security deposit including double the amount is dismissed without leave to reapply.

The tenant's claim for moving costs is also dismissed without leave to reapply. If the tenant did not agree with the validity of the One Month Notice issued by the landlord, the tenant was entitled to file an application to dispute the Notice. Rather, the tenant accepted the notice and voluntarily vacated the unit. The tenant also failed to present sufficient evidence in support of his claim that he was forced to incur moving costs due to harassment on the part of the landlord.

As the tenant was not successful in this application, I find that the tenant is not entitled to recover the \$100.00 filing fee paid for this application.

Conclusion

Pursuant to section 67 of the *Act*, **I grant the landlord a Monetary Order in the amount of \$900.00.** 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: April 02, 2020

Residential Tenancy Branch