



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MNSD, FFL

Introduction

On March 27, 2021, the Landlord submitted an Application for Dispute Resolution under the *Residential Tenancy Act* (“the Act”) seeking a monetary order for unpaid rent; to keep the security deposit, and to recover the filing fee.

The matter was set for a conference call hearing at 1:30 pm on this date. The Landlord attended the teleconference hearing; however, the Tenant did not. The line remained open while the phone system was monitored for ten minutes and the Tenant did not call into the hearing during this time.

The Landlord provided affirmed testimony that she served the Tenant with the Notice of Dispute Resolution Proceeding using registered mail sent to the forwarding address provided by the Tenant. The Landlord testified that the Tenant received the notice of the hearing as the Landlord received a text message from the Tenant regarding the hearing.

The hearing proceeded. The Landlord was provided with the opportunity to present affirmed oral testimony and to make submissions during the hearing.

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.

Issues to be Decided

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

Background and Evidence

The Landlord testified that the tenancy began on November 14, 2020, as a one-year fixed term tenancy. Rent in the amount of \$1,675.00 was to be paid to the Landlord by the 14th day of each month. The Tenant paid the Landlord a security deposit of \$837.50. The Landlord provided a copy of the tenancy agreement.

The Landlord testified that the Tenant failed to pay the rent due when it was due under the tenancy agreement for the month of March 2020.

The Landlord contacted the Tenant and informed her that the Landlord was going to issue a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities. The Landlord never issued a 10 Day Notice.

The Landlord submitted that the Tenant responded to the Landlord by stating she was accepting the Landlord's 10 Day Notice and that she was moving out of the rental unit.

The Landlord testified that the Tenant moved out of the rental unit on March 21, 2021 and did not pay the rent owing for March 2021. The Landlord is seeking a monetary order in the amount of \$1,675.00 for unpaid March 2020 rent.

Security Deposit

The Landlord is seeking to keep the security deposit of \$837.50 in partial satisfaction of her claim for unpaid March 2021 rent.

Analysis

To be successful with a claim for compensation an applicant must prove:

1. That the other party breached the Act, regulation or tenancy agreement.
2. That the breach caused the party making the application to incur damages or loss as a result of the breach.
3. The value of the loss; and,
4. That the party making the claim took reasonable steps to minimize the damage or loss.

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.

Based on the evidence before me, the testimony of the Landlord, and on a balance of probabilities, I make the following findings:

I find that the tenancy agreement requires the Tenant to pay the Landlord rent in the amount of \$1,675.00 each month by the 14th day. I find that the Tenant failed to pay the rent owing for March 2021 on or before March 14, 2021.

I find that the Landlord never issued a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities to the Tenant. The Landlord was simply explaining that the Landlord could issue a 10 Day Notice. The tenancy did not end due to a notice to end tenancy issued by the Landlord.

I find that the Tenant moved out of the rental unit on March 21, 2021 without paying the March 2021 rent. I find that the Tenant did not give the Landlord a proper written notice for the tenancy to end on March 21, 2021. The earliest date that the Tenant could have legally ended the tenancy is May 14, 2021.

I find that the Tenant is responsible to pay the rent owing under the tenancy agreement for March 2021. I grant the Landlord a monetary order for unpaid March 2021 rent in the amount of \$1,675.00.

I find that the Landlord applied for dispute resolution and claimed against the security deposit on March 27, 2021. I find that the Landlord made a claim against the security deposit within 15 days of when the Tenant vacated the rental unit. I authorize the Landlord to keep the security deposit of \$837.50 towards the unpaid March 2021 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 \$1,775.00 comprised of \$1,675.00 for unpaid rent and the \$100.00 fee paid by the Landlord for this hearing.

After setting off the security deposit of \$837.50 towards the award of \$1,775.00, I find that the Landlord is entitled to a monetary order in the amount of \$937.50. 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 Landlords claim for unpaid rent and to keep the security deposit is successful.

The Tenant failed to end the tenancy with proper written notice and also failed pay the rent owing under the tenancy agreement for March 2021.

I order that the Landlord can keep the security deposit in the amount of \$837.50 in partial satisfaction of the Landlord's award for unpaid rent.

I grant the Landlord a monetary order in the amount of \$937.50.

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: August 26, 2021

Residential Tenancy Branch