



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

Decision

Dispute Codes: MNR, MNSD, O, FF

Introduction

This Dispute Resolution hearing was set to deal with an Application by the landlord for a monetary order for rent owed, loss of rent and funds owed to the landlord for overcharged repairs.

Despite being served by registered mail on July 17, 2012, the tenant did not appear.

Issue(s) to be Decided

Is the landlord entitled to monetary compensation under section 67 of the *Act*?

Background and Evidence

The landlord testified that the tenancy began in March 2009, rent was \$500.00 and no security deposit was paid. The landlord testified that the tenancy was terminated in June 2012 with an order of possession awarded at a previous hearing in which the tenant unsuccessfully challenged a Ten Day Notice to End Tenancy for Unpaid Rent.

The landlord testified that the tenant owed rental arrears of \$500.00 for May 2012 and \$500.00 for June 2012.

The landlord is also claiming \$500.00 loss of rent for July, 2012 during which cleaning and repairs were done. The landlord stated that the tenant locked up the entrance to the yard and set up barriers to the rental premises to prevent the landlord from accessing the unit after he had vacated.

In addition to the above, the landlord stated that she had paid the tenant for materials to do some improvements, but was never given receipts to justify a portion of the payment in the amount of \$742.23, which is being claimed.

Analysis

Section 26 of the *Act* states that rent must be paid when it is due, under the tenancy agreement, I find that the tenant fell into arrears and the landlord is entitled to \$1,000.00 rent owed for May and June 2012.

With respect to damages, section 7 of the Act states that, if a landlord or tenant does not comply with the Act or tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results. Section 67 grants a dispute Resolution Officer the authority to determine the amount and to order payment.

It is important to note that in a claim for damage or loss under the Act, the party claiming the damage or loss bears the burden of proof and the evidence furnished by the applicant must satisfy each component of the test below:

Test For Damage and Loss Claims

1. Proof that the damage or loss exists,
2. Proof that this damage or loss happened solely because of the actions or neglect of the Respondent in violation of the Act or agreement
3. Verification of the actual amount required to compensate for the claimed loss or to rectify the damage.
4. Proof that the claimant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage

The burden of proof is on the claimant, that being the landlord.

Section 37(2) of the Act states 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, and give the landlord all the keys or other means of access that are in the possession or control of the tenant and that allow access to and within the residential property. In this case I find that when the tenant finally vacated the unit in June 2012, it was not left in a rentable state and the landlord suffered a loss of \$500.00 for which she is entitled to reimbursement.

With respect to the landlord's claim for the return of funds that were paid to the tenant to purchase materials for repairs, that were later found not to be supported by receipts, I find that this was a separate contractual matter between these two parties.

In regard to agreements between a landlord and tenant, section 6 of the Act states that the rights, obligations and prohibitions established under the Act are enforceable between a landlord and tenant under a tenancy agreement and that a landlord or tenant may make an application for dispute resolution if they cannot resolve a dispute.

However, section 1 of the Act, defines "tenancy agreement" as follows:

"tenancy agreement" means an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a rental unit,

use of common areas and services and facilities, and includes a licence to occupy a rental unit;

Section 58 of the Act provides that, except as restricted under this Act, a person may make an application for dispute resolution in relation to a dispute with the person's landlord or tenant in respect of any of the following:

- (a) rights, obligations and prohibitions under this Act;
- (b) rights and obligations under the terms of a tenancy agreement that
 - (i) are required or prohibited under this Act, or
 - (ii) relate to the tenant's use, occupation or maintenance of the rental unit, or the use of common areas or services or facilities.

I find that the labour and materials exchange consented to by the parties did not qualify as part of a tenancy agreement under the Act and I find that I do not have the authority to determine terms under this other contract because it falls outside my delegated jurisdiction to enforce. I therefore decline to hear or consider the portion of the application relating to the claim for \$742.23 against the respondent. The parties are at liberty to seek alternate judicial or legal remedies to resolve this portion of the dispute.

Accordingly, I find that the landlord is entitled to a total monetary compensation of \$1,550.00, comprised of \$1,000.00 for rent, \$500.00 for loss of revenue and the \$50.00 cost of this application.

Conclusion

I hereby issue a monetary order to the landlord in the amount of \$1,550.00. This order must be served on the tenant and can be enforced through Small Claims 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: September 25, 2012.

Residential Tenancy Branch