



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MNDC, MNSD, FF

Introduction

This hearing was convened by way of conference call concerning an application made by the landlord for a monetary order for unpaid rent or utilities; for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; for an order permitting the landlord to keep all or part of the pet damage deposit or security deposit; and to recover the filing fee from the tenant for the cost of the application.

The landlord attended the conference call hearing, gave affirmed testimony and provided evidentiary material prior to the commencement of the hearing. However, despite being served with the Landlord's Application for Dispute Resolution and notice of hearing documents by registered mail on November 21, 2012 the tenant did not attend. The landlord testified to serving the documents on that date and in that manner and has provided a copy of the Registered Mail tracking number as well as a receipt issued by Canada Post as evidence of such service, and I am satisfied that the tenant has been served in accordance with the Residential Tenancy Act. The line remained open while the phone system was monitored for 10 minutes and the only participant who joined the call was the landlord.

All evidence and testimony provided has been reviewed and is considered in this Decision.

During the course of the hearing, the landlord applied to amend the Landlord's Application for Dispute Resolution to add an alias to the tenant's name in the style of cause. The tenancy agreement names the tenant the same as the application, however, the tenant goes by a shortened first name and some documents are in that shortened first name. The Residential Tenancy Branch Rules of Procedure set out that amendments to applications must be served upon the parties. I find that in the absence

of the tenant, and without consent or prior knowledge, such an amendment might prejudice the tenant. Therefore, the amendment is not allowed.

Issue(s) to be Decided

- Has the landlord established a monetary claim as against the tenant for unpaid rent or utilities?
- Has the landlord established a monetary claim as against the tenant for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement?
- Is the landlord entitled to keep all or part of the pet damage deposit or security deposit in full or partial satisfaction of the claim?

Background and Evidence

The landlord testified that this fixed term tenancy began 10 or 12 years ago and expired on August 31, 2012, at which time the tenant moved out of the rental unit. Rent in the amount of \$2,275.00 per month was payable in advance on the 1st day of each month. On July 30, 2010 the landlord collected a security deposit from the tenant in the amount of \$1,137.50 which is still held in trust by the landlord.

The landlord further testified that in February, 2012 while completing a tax form, the landlord noticed that a rent payment had not been received in 2011. The landlord spoke to the tenant who agreed that rent remained unpaid but didn't have any blank cheques and asked the landlord to wait for new cheques to arrive. The landlord again asked the tenant for the rent money but the tenant stated that the tenant had no money. The landlord sent the tenant a letter and provided a copy for this hearing. The letter is dated February 7, 2012 and requests the payment within 15 days. A second letter was provided to the tenant dated April 10, 2012 again requesting payment, and again May 12, 2012.

The landlord has also provided copies of the landlord's bank statements from September, 2010 to December, 2011 which show the \$2,275.00 rental payments made to that account in every month except August, 2011.

The landlord requests a monetary order in the amount of \$2,275.00 in addition to recovery of the \$50.00 filing fee for the cost of this application. The tenant has not provided the landlord with a forwarding address, and the landlord conducted a search for the tenant and located an address at which to serve the tenant. The landlord also

requests an order permitting the landlord to keep all of the security deposit in partial satisfaction of the claim.

Analysis

I have reviewed the documentary evidence provided by the landlord and I find that the bank statements are consistent with the testimony and that the rent was deposited to the same bank account each month with the exception of payment for August, 2011. I have also reviewed the letters written by the landlord to the tenant requesting payment. I accept the oral testimony of the landlord that the tenant promised on more than one occasion to pay the rent but failed to do so.

In the circumstances, I find that the landlord has established a claim as against the tenant in the amount of \$2,275.00. Since the landlord has been successful with the application, the landlord is also entitled to recovery of the \$50.00 filing fee for the cost of this application. I order the landlord to keep the security deposit in partial satisfaction of the claim and I grant the landlord a monetary order for the balance of \$1,187.50.

Conclusion

For the reasons set out above, I hereby order the landlord to keep the security deposit of \$1,137.50 and I grant the landlord a monetary order pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$1,187.50.

This order is final and binding on the parties and may be enforced.

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: February 27, 2013

Residential Tenancy Branch

