



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MNR, MNSD, FF

Introduction

This hearing was convened in response to an application by the Tenant and an application by the Landlord pursuant to the *Residential Tenancy Act* (the "Act").

The Tenant applied for:

1. A Monetary Order for compensation - Section 67;
2. An Order for the return of the Tenant's personal property – Section 65; and
3. An Order to recover the filing fee for this application - Section 72.

The Landlord applied for:

1. A Monetary Order for unpaid rent or utilities - Section 67;
2. A Monetary Order for compensation – Section 67;
3. An Order to retain the security deposit – Section 38; and
4. An Order to recover the filing fee for this application - Section 72.

The Tenant and Landlord were each given full opportunity to be heard, to present evidence and to make submissions.

Preliminary Matter

Previous disputes between the Parties resulted in a Decision dated January 6, 2014 in which the Landlord was provided a monetary order for unpaid rent and an order of possession. A second Decision dated May 23, 2014 provided the Landlord with another order of possession, a monetary order for unpaid rent for March, April and May 2014, and a retention of the security deposit. The Landlord agrees that he was provided these monetary orders and states that he is claiming the amounts as remaining unpaid. The

Landlord is also seeking unpaid rent for June 1 – 15, 2104. The Tenant does not dispute that rent for June 2014 was not paid.

Section 77 of the Act provides that a decision or an order is final and binding on the parties. As the dispute in relation to rent to and including May 14, 2014 and in relation to the security deposit has already been determined by the previous Decisions, I dismiss that part of the Landlord's application in relation to the rental amounts to and including May 2014 and the security deposit. The matter of unpaid rent for June 2014 is dealt with below.

Issue(s) to be Decided

Is the Tenant entitled to the monetary amounts claimed?

Is the Tenant entitled to an order for the return of its personal property?

Is the Landlord entitled to the monetary amounts claimed?

Background and Evidence

The tenancy started on June 1, 2013 and ended on June 16, 2014. Rent of \$2,800.00 was payable monthly on the first day of each month.

The Landlord claims \$1,400.00 for unpaid June 2014 rent. The Tenant does not dispute that no rents were paid for June 2014.

The Landlord states that the Tenant's failure to pay the rents resulted in stress, health problems, bad credit and the forced sale of the unit. The Landlord provided no supporting documentary evidence. The Landlord claims \$10,000.00. The Landlord states that this is the amount of money he had to borrow because of the Tenant's failure to pay the rent on time.

The Tenant states that the Landlord took the Tenant's personal property, a lap top and art work, by force and refuses to return them until the past rents are due. The Landlord agrees to deliver these belongings to the Tenant by the end of the hearing date.

The Tenant claims that the Landlord subjected her to humiliation, torture, trespassing and seizure of personal belongings and claims \$10,000.00. The Tenant states that the Landlord entered the unit without notice or permission between June 14 and 16, 2014. The Tenant states that the Landlord's construction workers also entered the unit between these dates and that the Tenant did not ask them to leave as she felt she had no choice. The Tenant states that the Landlord discussed her personal affairs with the Tenant's adult son and that this breached her privacy.

The Landlord states that the Tenant gave them permission to enter the unit in order to start work on the unit. The Landlord states that they always sought this permission before entering the unit and the Tenant did not withhold this permission.

Analysis

Section 7 of the Act provides that where a **tenant or landlord** does not comply with the Act, regulation or tenancy agreement, the **tenant** or landlord must compensate the **other** for damage or loss that results. In a claim for damage or loss under the Act, regulation or tenancy agreement, the party claiming costs for the damage or loss must prove, inter alia, that the damage or loss claimed was caused by the actions or neglect of the responding party, that reasonable steps were taken by the claiming party to minimize or mitigate the costs claimed, and that costs for the damage or loss have been incurred or established. As the Landlord has already compensated for the Tenant's failure to pay rent to and including May 2014 and as there is no evidence of any other breach of or failure to comply with the Act or tenancy agreement by the Tenant, I find that the Landlord has failed to establish its claim for compensation. I therefore dismiss this claim.

As the Landlord has agreed to return the Tenant's personal property I find that this matter has been resolved. Should the Landlord have failed to return the property as agreed I give the Tenant leave to reapply for compensation.

Given the Landlord's believable evidence that permission was granted to enter the unit in June 2014, I find that the Tenant has not substantiated on a balance of probabilities that the Landlord breached the Act in relation to these entries. I do not consider the Landlord's discussion of the Tenant's tenancy business as significant enough to warrant compensation. As the Tenant has failed to substantiate any breach of the Act by the Landlord and as the matter of the return of personal belongings has been agreed to, I find that the Tenant has not substantiated a loss pursuant to a breach of the Act and I therefore dismiss the Tenant's claim for compensation. As the Tenant's application has met with limited success, I decline to award recovery of the filing fee.

Based on the undisputed evidence that rents were not paid in June 2014, I find that the Landlord has substantiated a monetary order of **\$1,400.00** as claimed. As the Landlord's application has met with limited success, I decline to award recovery of the filing fee.

Conclusion

I grant the Tenant an order under Section 67 of the Act for **\$1,400.00**. If necessary, this order may be filed in the Small Claims 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: August 18, 2014

Residential Tenancy Branch

