



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNR, FF

Introduction

This hearing was convened in response to an application by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. A Monetary Order for unpaid rent - Section 67;
2. A Monetary Order for damage to the unit - Section 67; and
3. An Order to recover the filing fee for this application - Section 72.

Preliminary Matter

The Tenant did not participate in the hearing. The Tenant provided its forwarding address to the Landlord at the previous hearing as set out in the Interim Decision dated June 6, 2016. The Landlord discovered that this address belonged to an agency. The Landlord gave an employee of this agency the documents for the hearing including the notice of reconvened hearing and all evidence packages as required in the interim Decision. The agency verbally confirmed with the Landlord that they accepted the documents on behalf of the Tenant.

Section 71 of the Act provides that a document not served in accordance with section 88 or 89 may be found to be sufficiently given or served for purposes of this Act. Based on the undisputed evidence of the Landlord and considering that the forwarding address was provided by the Tenant at the original hearing, I find that the Tenant has been sufficiently served for the purposes of the Act. The Landlord was given full opportunity to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Is the Landlord entitled to the monetary amounts claimed?

Background and Evidence

The tenancy started on September 15, 2015. The tenancy agreement provides for rent of \$1,600.00 payable on the first day of each month. The tenancy agreement provides that the Tenant pays 1/3 of the hydro. At the outset of the tenancy the Landlord collected \$800.00 as a security deposit.

In a Decision dated April 25, 2016 the Landlord was granted an order of possession of the unit effective April 30, 2016. The Tenant did not move out of the unit and the Landlord obtained a Writ of Possession from the Supreme Court. The Writ was enforced by a bailiff and the Tenant was removed from the rental unit on May 18, 2016.

The Tenant paid no rent for May 2016 and the Landlord claims \$1,600.00. The Tenant did not pay for hydro for the period from approximately January 15 to May 16, 2016. The Landlord claims 1/3 of the billed amounts for this period and provides the bills of \$758.79 and \$544.53.

The Landlord spent time away from work to deal with the tenancy, such as attending at the RTB and the Supreme Court, and the Landlord claims \$450.00.

The Tenant smoked in the unit and it smells. The Landlord has not painted the unit and has advertised the unit for a higher rent than paid by the Tenant. The Landlord wishes to paint the unit but has not scheduled any time or obtained any person to carry out this task. No estimate was provided for the claimed amount of \$3,000.00.

The Landlord incurred bailiff costs of \$1,042.24 and claims this amount.

Analysis

Section 7 of the Act provides that where a tenant does not comply with the Act, regulation or tenancy agreement, the tenant must compensate the landlord for damage or loss that results. This section further provides that where a landlord claims compensation the landlord must do whatever is reasonable to minimize the damage or loss. When a tenancy ends no further rent is payable. Where a tenant does not move-out of a unit when ordered the tenant will be responsible for over holding of the unit.

As the Tenant did not move out of the unit as required and did not pay any rent for May 2016 I find that the Landlord has substantiated an over holding amount to the date of move-out in the amount of **\$928.98**. This amount is based on a per diem rate of \$51.61 for 18 days.

Although the Landlord did not claim compensation for the bailiff costs in the application that was made while the Tenant was still in the unit, based on the Landlord's undisputed evidence that the Tenant was present in the unit until removed by the bailiff and considering that the Landlord claimed a total monetary amount over \$5,000.00 I find that the Tenant could reasonably expect to be liable for bailiff costs. Given the invoice I find that the Landlord has substantiated an entitlement to **\$1,042.24**.

Given the terms of the tenancy agreement, based on the Landlord's undisputed evidence and given the invoice I find that the landlord has substantiated that the Tenant failed to pay 1/3 of the utilities for the period January 15 to May 16, 2016 in the amount of **\$252.93** (\$758.79/3) and **\$181.51** (544.53/3).

As the Landlord has not painted the unit, has not provided any estimate of costs, has not scheduled the unit to be painted and is currently advertising the unit for a greater amount than paid by the Tenant I find that the Landlord has not substantiated any cost or loss and I dismiss this claim.

As the Act does not provide for any compensation to a landlord for carrying out its obligations or operating the rental business I dismiss the Landlord's claims for lost wages.

As the Landlord's application has met with some success I find that the Landlord is entitled to recovery of the **\$100.00** filing fee for a total entitlement of **\$2,505.66**.

Deducting the security deposit plus zero interest of **\$800.00** from this amount leaves **\$1,705.66** owed by the Tenant to the Landlord.

Conclusion

I Order the Landlord to retain the security deposit plus interest in the amount of \$800.00 in partial satisfaction of the claim and I grant the Landlord an order under Section 67 of the Act for the remaining amount of **\$1,705.66**. 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: July 22, 2016

Residential Tenancy Branch

