



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR MNDC MNSD

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- a monetary order for unpaid rent and/or damage or loss pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38;

The hearing was conducted by conference call. The tenant did not attend this hearing, although I waited until 2:30 p.m. in order to enable the tenant to connect with this teleconference hearing scheduled for 1:30 p.m. The landlord attended the hearing and was given a full opportunity to be heard, to present evidence and to make submissions.

The landlord testified that on April 27, 2016 she personally served the tenant with a copy of the Application for Dispute Resolution and Notice of Hearing.

Based on the above evidence, I am satisfied that the tenant was served with the Application for Dispute Resolution and Notice of Dispute Resolution Hearing pursuant to section 89 of the Act. The hearing proceeded in the absence of the tenant.

Preliminary Issue – Amendment to Landlord's Application

Section 64(3)(c) of the Act allows me to amend an application for dispute resolution.

At the hearing, the landlord testified that although she had filed an Amended Application on June 10, 2016, she was not able to serve the tenant prior to the hearing. The landlord's amendment included unpaid rent for the month of May 2016 as well as court/bailiff fees to obtain and enforce a writ of possession. Although the tenant did not have prior notice of the claim for unpaid rent for May 2016, I find that the tenant should

reasonably have known that the landlord would suffer this loss if the tenant neither paid rent nor vacated the rental unit. I therefore allowed the landlord's request for an amendment to include further unpaid rent. The rest of the landlord's amended claim is dismissed with leave to reapply as the tenant was not sufficiently served.

Issues

Is the landlord entitled to a monetary award for unpaid rent and/or damage or loss?
Is the landlord entitled to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary award requested?

Background and Evidence

The parties entered into a written tenancy agreement on March 12, 2016. The tenancy agreement was a sublease of a residential house. The landlord (the original lessee) had been leasing the rental unit for over 4 years and subleased the rental unit for a period while she would be away for school. The sublease agreement was for a fixed term period commencing April 1, 2016 and ending June 30, 2017. The monthly rent as per the sublease agreement was \$1250.00 payable on the 1st day of each month. The tenant paid a security deposit of \$350.00 at the start of the tenancy which the landlord continues to hold.

After allowing the amendment to include unpaid rent for May 2016, the landlord's claim is for a total of \$5370.00 comprised of the following:

Item	Amount
March rent	400.00
April rent	1250.00
May rent	1250.00
Nexgrill 3 burner grill plus utensils	550.00
Backyard playground plus installation fee	1800.00
Propane tanks (2)	120.00
Total Monetary Order Sought	\$5370.00

The landlord testified that although the tenancy agreement stipulated a start date of April 1, 2016, the tenant took possession of the rental unit on March 12, 2016. The parties agreed that the tenant would pay \$400.00 in rent for the period of March 12,

2016 to March 31, 2016. The landlord provided a copy of a bounced cheque supporting an attempted payment of \$400.00 by the tenant for this period.

The landlord acknowledged in the hearing that she had previously applied for and received a monetary award in the amount of \$1250.00 for compensation of unpaid rent for the month of April 2016.

The landlord testified that she did not obtain possession of the rental unit May 24, 2016 after enforcing a writ of seizure and is therefore claiming loss of rent for the month of May 2016.

The landlord claims the tenant sold and/or disposed of the backyard playground, grill and propane tanks. The landlord had left these items behind at the rental unit as they were too big to take with her to her new temporary accommodations. In support of her allegation that the tenant sold and/or disposed of these items, the landlord provided an e-mail from the tenant dated April 25, 2016 in which the tenant states she donated all the items to charity. The tenants e-mail was sent in response to the landlord's e-mail in which the landlord accused the tenant of selling the playground and grill. The landlord provided an email from Canadian Tire customer service in support of the replacement cost of a new comparable grill. The landlord testified the grill was purchased new two years ago and was in mint condition. The landlord has not yet replaced the grill as she still currently lives in a small apartment. The landlord testified that she purchased the backyard playground two years ago and it was brand new at time of purchase and was still in excellent condition. She also paid to have the playground installed. She did not have original receipts but provided comparable purchase and install costs of a similar unit. The landlord has not yet replaced the playground as she still currently lives in a small apartment. The landlord also submitted estimates of replacing the two propane tanks.

Analysis

Pursuant to section 67 of the *Act*, when a party makes a claim for damage or loss, the burden of proof lies with the applicant to establish the claim on a balance of probabilities. To prove a loss, the applicant must satisfy the following four elements:

1. Proof that the damage or loss exists;
2. Proof that the damage or loss occurred due to the actions or neglect of the other party in violation of the *Act*, *Regulation* or tenancy agreement;
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
4. Proof that the applicant followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

I find that the landlord has established the existence of the damage or loss as claimed and that it occurred due to the actions or neglect of the tenant. The landlord has also submitted evidence in support of the amounts required to compensate for the loss and I accept these amounts to reasonable.

With the exception of the claim for unpaid rent for April 2016 for which the landlord has already been granted a monetary order, I accept the landlord's claim in full and grant the landlord a monetary award in the amount of \$4,120.00.

The landlord continues to hold a security deposit and pet deposit in the amount of \$350.00. I allow the landlord to retain the security deposit in partial satisfaction of the monetary award pursuant to section 38 of the Act.

Therefore, I find that the landlord is entitled to a Monetary Order in the amount of \$3,770.00.

Conclusion

Pursuant to section 67 of the Act, I grant the landlord a Monetary Order in the amount of \$3,770.00. Should the tenant fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial 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 05, 2016

Residential Tenancy Branch

