Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes   MND MNR MNSD FF

Introduction

This hearing was convened as a result of the landlords' application for dispute resolution under the *Residential Tenancy Act* (the "Act") for a monetary order for unpaid rent or utilities, for damages to the unit, site or property, for authorization to retain all or part of the tenant's security deposit, and to recover the cost of the filing fee.

Landlord M.P. (the "landlord") attended the teleconference hearing and gave affirmed testimony. During the hearing the landlord was given the opportunity to provide the landlords' evidence orally. A summary of the evidence is provided below and includes only that which is relevant to the hearing.

As the tenant did not attend the hearing, service of the Notice of a Dispute Resolution Hearing (the "Notice of Hearing"), Application for Dispute Resolution (the "Application") and documentary evidence were considered. The landlord testified that the Notice of Hearing, Application and documentary evidence were served on the tenant by registered mail on April 7, 2016. The landlords submitted in evidence a document from Canada Post indicating that the tenant's mail was being forwarded to her new address. Section 90 of the *Act* states that documents served by registered mail are deemed served five days after they are mailed. The online registered mail tracking website information indicates that the tenant refused the registered mail package and was returned to sender as "item refused by recipient." Based on the above, and without any evidence to prove to the contrary, I accept that the tenant was deemed served on April 12, 2016 with the Notice of Hearing, Application and documentary evidence pursuant to section 90 of the *Act.* I note that refusal or neglect to pick up a registered mail package is not a ground for a Review Consideration under the *Act.*

Preliminary and Procedural Matter

During the hearing, the landlord requested to reduce his claim for item 4 by $25.00 as the landlords were able to re-rent the rental unit effective May 15, 2016 and received $400.00 for May 15-31, 2016 so the actual amount of loss of rent for May 1-14, 2016 was $350.00 instead of $375.00. I find that a reduction in the landlords' monetary claim does not prejudice the tenant and pursuant to section 64(3) of the *Act* I amend the landlords' application accordingly.

Issues to be Decided

- Are the landlords entitled to a monetary order under the *Act,* and if so, in what amount?
- What should happen to the tenant's security deposit under the *Act?*

Background and Evidence

A copy of the tenancy agreement was submitted in evidence. A month to month tenancy began on May 2, 2015. Monthly rent of $750.00 was due on the first day of each month. The tenant paid a security deposit of $375.00 at the start of the tenancy which the landlords continue to hold. The tenant vacated the rental unit on April 1, 2016.

The landlords' reduced monetary claim for $1,260.00 is as follows:

ITEM DESCRIPTION	AMOUNT CLAIMED
1. Cleaning costs	$30.00
2. Light fixture	$30.00
3. Unpaid April 2016 rent	$750.00
4. Loss of May 1-14, 2016 rent	$350.00
5. Filing fee	$100.00
TOTAL	$1,260.00

Regarding item 1, the landlord affirmed that he spent 2.5 hours cleaning the balcony which was left dirty by the tenant before she vacated on April 1, 2016. In addition, the landlord cleaned the living room and bathroom which were not left reasonably clean by the tenant at the end of the tenancy, according to the landlord. The landlord submitted

photos in evidence showing what appears to be a dirty bench and balcony. The landlord is charging $12.00 per hour for cleaning labour.

Regarding item 2, the landlord affirmed that the outdoor light fixture was covered in bird droppings and not cleaned by the tenant before vacating and that the light fixture had to be replaced due to not being cleaned at all. The landlord stated that he purchased a new fixture at a local home improvement store for $30.00 and is not charging for the labour to replace the fixture.

Regarding item 3, the landlords have claimed $750.00 for unpaid April 2016 rent. The landlord testified that he first became aware the tenant was vacating the rental unit on April 1, 2016 and submitted a copy of the text in evidence. The text reads in party from the tenant:

"…condo is empty…keys are with neighbor in 305…"

[reproduced as written]

The landlord affirmed that the tenant failed to provide proper 1 month's written notice as required under the *Act* and did not end the tenancy in accordance with the *Act* as a result.

Regarding item 4, the landlords have claimed $350.00 for the loss of May 2016 rent for May 1-14, 2016. The landlord testified that they were able to re-rent the rental unit effective May 15, 2016 for $800.00 per month and that the new renters paid $400.00 for May 15-31, 2016. As a result, the landlord affirmed that the landlords suffered a loss of $350.00 due to the inability to re-rent the rental unit for May 1, 2016 even though the landlords began to advertise it as soon as possible.

Regarding item 5, the landlords are seeking the recovery of the cost of the filing fee which will be dealt with later in this decision.

Analysis

Based on the undisputed documentary evidence and testimony of the landlord provided during the hearing, and on the balance of probabilities, I find the following.

As the tenant was served with the Notice of Hearing, Application and documentary evidence and did not attend the hearing, I consider this matter to be unopposed by the tenant. As a result, I find the landlord's application is fully successful as I find the

evidence supports the landlords' claim and is reasonable. I also find the tenant breached section 45 of the *Act* which states in part:

> Section 45 of the *Act* states:
>
> **45** (1) A tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that
>
> > **(a) is not earlier than one month after the date the landlord receives the notice, and**
> >
> > **(b) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.**
>
> (4) A notice to end a tenancy given under this section must comply with section 52 *[form and content of notice to end tenancy]*.
>
> > [my emphasis added]

The tenant failed to give proper one month's prior written notice to the landlord before vacating the rental unit on April 1, 2016. Therefore the tenant owes April 2016 and rent for May 1-14, 2016. In addition, I find the landlords are entitled to the recovery of the cost of their filing fee of $100.00 as their application was fully successful. Given the above, I find the landlords have proven their claim for items 1-5 inclusive in the amount of **$1,260.00**. The landlords continue to hold the tenant's security deposit of $375.00 which has not accrued any interest to date.

I authorize the landlords to retain the tenant's full security deposit of $375.00 in partial satisfaction of the landlords' monetary claim. I grant the landlords a monetary order pursuant to section 67 of the *Act*, for the balance owing by the tenant to the landlords in the amount of **$885.00.**

Conclusion

The landlords' application is fully successful.

The landlords have been authorized to retain the tenant's full security deposit of $375.00 in partial satisfaction of the landlords' monetary claim. The landlords have been granted a monetary order pursuant to section 67 of the *Act*, for the balance owing by the tenant to the landlords in the amount of $885.00. The landlords must serve the tenant with the monetary order and may enforce the monetary order in the Provincial Court (Small Claims Division).

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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 22, 2016

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Residential Tenancy Branch