



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MNSD, FF

Introduction

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

- a monetary order for unpaid rent, pursuant to section 67;
- authorization to retain the tenants' security deposit in partial satisfaction of the monetary order requested, pursuant to section 38; and
- authorization to recover the filing fee for this application from the tenants, pursuant to section 72.

The two tenants, male and female, did not attend this hearing, which lasted approximately 32 minutes. The landlord attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

The landlord testified that the two tenants were personally served separately with a copy of the landlord's application for dispute resolution hearing package, both on June 14, 2016, at their places of employment. The landlord claimed that the two tenants did not provide any forwarding addresses to him when they vacated. The landlord provided a signed statement, dated June 15, 2016, indicating that the landlord personally served the female tenant and his friend witnessed this service. He also provided a signed statement, dated June 15, 2016, indicating that his friend personally served the male tenant and the landlord witnessed this service. The statement notes that the male tenant refused to take the package in his hands, so the package was left directly in front of him. In accordance with section 89 of the *Act*, I find that both tenants were personally served with the landlord's application.

Pursuant to section 64(3)(c) of the *Act*, I amend the landlord's application to add a monetary claim for money owed or compensation for damage or loss under the *Act*,

Residential Tenancy Regulation ("Regulation") or tenancy agreement, pursuant to section 67. The landlord provided a monetary order worksheet as well as receipts and explanations regarding the other amounts he is seeking from the tenants besides rent. Therefore, I find that the tenants had proper notice of the landlord's claim, despite the fact that they did not attend this hearing.

Issues to be Decided

Is the landlord entitled to a monetary award for unpaid rent and for money owed or compensation for damage or loss under the *Act, Regulation* or tenancy agreement?

Is the landlord entitled to retain the tenants' security deposit in partial satisfaction of the monetary order requested?

Is the landlord entitled to recover the filing fee for this Application?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of the landlord, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the landlord's claims and my findings are set out below.

The landlord testified regarding the following facts. This tenancy began on March 15, 2015 and was for a fixed term to end on September 30, 2016. The tenants vacated on May 1, 2016. Monthly rent in the amount of \$1,200.00 was payable on the first day of each month. A security deposit of \$600.00 was paid by the tenants and the landlord continues to retain this deposit. Move-in and move-out condition inspection reports were not completed for this tenancy. A copy of the written tenancy agreement was provided for this hearing. The landlord seeks a monetary order of \$1,467.00 plus the \$100.00 filing fee.

Analysis

Rental Loss

I find that the landlord and tenants initially entered into a fixed term tenancy for the period from March 15, 2015 until March 14, 2016 and then renewed the fixed term on October 1, 2015, to have the end date changed to September 30, 2016, after which the tenants were required to move out of the rental unit. This renewal change was initialled by both the landlord and the tenants on the written tenancy agreement.

Subsection 45(2) of the Act sets out how tenants may end a fixed term tenancy:

A tenant may end a fixed term 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,

(b) is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and

(c) 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.

The above provision states that the tenants cannot give notice to end the tenancy before the end of the fixed term. If they do, they may have to pay for rental losses to the landlord. In this case, the tenants ended the tenancy on May 1, 2016, prior to the end of the fixed term on September 30, 2016. I find that the tenants breached the fixed term tenancy agreement. As such, the landlord is entitled to compensation for losses he incurred as a result of the tenants' failure to comply with the terms of their tenancy agreement and the Act.

Section 7(1) of the Act establishes that tenants who do not comply with the Act, Regulation or tenancy agreement must compensate the landlord for damage or loss that results from that failure to comply. However, section 7(2) of the Act places a responsibility on a landlord claiming compensation for loss resulting from tenants' non-compliance with the Act to do whatever is reasonable to minimize that loss.

Based on the evidence presented, I accept that the landlord did attempt to the extent that was reasonable, to re-rent the premises after receiving notice that the tenants had left the rental unit. The landlord claimed that he received notice by way of text message from one of the roommates living in the same house as the tenants that they were leaving on May 1, 2016. The landlord said that he was out of town at the time. The landlord testified that he posted an advertisement on one website as of May 18, 2016, after he returned to town, in order to re-rent the unit. The landlord read the advertisement aloud during the hearing. He maintained that he advertised it for the same rent at \$1,200.00 per month and there were no restrictions listed such as a fixed term tenancy. He said that he received 34 applications and showed the place to about eight to ten people, after which he found someone on May 18, 2016. He testified that he re-rented the unit to a new tenant beginning on June 1, 2016.

Accordingly, I find that the landlord is entitled to a rental loss for May 2016 in the amount of \$1,200.00 from the tenants. I find that one month is a reasonable period of

time to advertise, show the unit and purchase the replacement items listed below, as well as change the locks.

Other Losses

Section 67 of the *Act* requires a party making a claim for damage or loss to prove the claim, on a balance of probabilities. In this case, to prove a loss, the landlord 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 tenants 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 landlord followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

I award the landlord \$115.61 to replace the entrance door locks, \$7.82 to replace the laundry keys and \$7.20 to replace the garage lock at the rental unit. I accept the landlord's testimony that the tenants did not return the above keys when they vacated the rental unit. The landlord provided copies of multiple text messages between him and the male tenant, indicating that in May 2016, the male tenant had the keys in his possession, agreed to drop them off to the landlord and failed to do so. As per section 37(2)(b) of the *Act*, the tenants are required to return the keys for the rental unit to the landlord when vacating. The landlord provided the original receipt for the purchase of the garage lock from July 25, 2006 for \$7.20 and the receipts for the new purchase of the entrance door locks for \$115.61 and laundry keys for \$7.82.

I award the landlord \$33.60 to replace a clothes drying rack at the rental unit. I accept the landlord's testimony that the tenants removed the rack from the rental unit when they vacated. The landlord provided copies of multiple text messages between him and the male tenant, indicating that in May 2016, the male tenant had the clothes drying rack in his possession, agreed to drop it off to the landlord and failed to do so. The landlord provided a copy of the original receipt from August 25, 2013.

I award the landlord \$58.78 to replace the set top box for the television at the rental unit. I accept the landlord's testimony that the tenants removed the set top box charger and cables from the rental unit when they vacated. The landlord provided copies of multiple text messages between him and the male tenant, indicating that in May 2016, the landlord requested the return of the set top box charger and cables and the tenants failed to return them. The landlord provided a receipt for the new purchase.

I dismiss the landlord's claim of \$15.00 for additional internet usage in May 2016, \$18.00 for on-demand television movies in April 2016 and a further \$11.00 for on-demand television movies in May 2016. The landlord did not provide the cable bills or invoices for these amounts. I find that the landlord failed part 3 of the above test.

As the landlord was mainly successful in this application, I find that he is entitled to recover the \$100.00 filing fee from the tenants.

The landlord continues to hold the tenants' security deposit of \$600.00. During the period of this tenancy, no interest is payable on the deposit. In accordance with the offsetting provisions of section 72 of the *Act*, I allow the landlord to retain the tenants' entire security deposit of \$600.00 in partial satisfaction of the monetary award.

Conclusion

I issue a monetary order in the landlord's favour in the amount of \$923.01 against the tenant(s). The tenant(s) must be served with this Order as soon as possible. Should the tenant(s) 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: December 02, 2016

Residential Tenancy Branch