



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR MNSD MNDC FF

Introduction

This hearing dealt with an application by the landlord for a monetary order and an order to retain the security deposit in partial satisfaction of the claim. The landlord and the tenant participated in the teleconference hearing.

At the outset of the hearing, each party confirmed that they had received the other party's evidence. Both parties were given full opportunity to give affirmed testimony and present their evidence. I have reviewed all testimony and other evidence. However, in this decision I only describe the evidence relevant to the issues and findings in this matter.

Preliminary Issue – Tenant's Request for Adjournment

The tenant requested an adjournment, on the grounds that he has filed a monetary claim that is currently scheduled to be held on May 31, 2017, and he has applied for judicial review of two other decisions. The landlord opposed the adjournment, as he filed his application in July 2016 and has already waited five months for his application to be heard.

A hearing was convened on June 1, 2016, pursuant to two applications by the tenant. One of the two applications included a monetary claim. The landlord called in to the teleconference hearing but the tenant did not. The tenant's application was therefore dismissed without leave to reapply. The tenant applied for a review consideration of the decision dismissing those applications, but in a review consideration decision dated June 15, 2016, the review application was dismissed. The tenant stated that he has applied, or plans to apply, for judicial review of those decisions, but he did not provide any evidence to support this statement.

I was not satisfied, on the evidence, that the tenant's previous monetary claim was a matter substantially before the Supreme Court. If the decision dismissing the tenant's first monetary claim is not sent back for rehearing, then it is likely that the tenant's new monetary claim, scheduled to be heard on May 31, 2017, will also be dismissed on the

ground that it is *res judicata*. I therefore determined that an adjournment was not appropriate in the circumstances.

Issue(s) to be Decided

Is the landlord entitled to monetary compensation as claimed?

Background and Evidence

The tenancy began on February 1, 2016 as a fixed-term tenancy that would end on January 31, 2017. Rent of \$725.00 was payable in advance on the first day of each month. At the beginning of the tenancy, the tenant paid the landlord a security deposit of \$362.50. The tenancy agreement contains a liquidated damages clause, where if the tenant breached the tenancy before the end of the fixed term, the landlord would be entitled to \$400.00 in liquidated damages.

On or about April 26, 2016 the landlord served the tenant with a notice to end tenancy for cause. On or about May 2, 2016 the landlord served the tenant with a notice to end tenancy for unpaid rent. The tenant applied to dispute both of these notices. The tenant did not attend the June 1, 2016 hearing, and the arbitrator dismissed the tenant's application and granted the landlord an order of possession. The landlord and the tenant carried out a move-out inspection on June 15, 2016. The tenant did not sign the move-out condition inspection report.

Landlord's Claim

The landlord has claimed \$400.00 in liquidated damages; \$2,175.00 in unpaid rent and lost revenue for May, June and July 2016; \$50.00 for two late payment fees; \$40.00 for suite cleaning; and \$100.00 for key replacements.

The landlord stated that at the time of signing the tenancy agreement he explained everything to the tenant, point by point, including the liquidated damages clause.

The landlord stated that he suggested to the tenant that they do the move-out inspection on June 13, 2016, but the tenant was not available on that date, so he proposed the date of June 15, 2016. The landlord stated that he did not begin advertising to re-rent the unit until after he received the keys back from the tenant on June 15, 2016. The landlord stated that he was unable to re-rent the unit until August 1, 2016.

In regard to the late payment fees, the landlord stated that clause 10 of the tenancy agreement indicates that if the tenant paid the rent late, he would be subject to a late rent fee of \$25.00. However, the landlord did not submit in his evidence the page of the tenancy agreement including this clause.

The landlord submitted an invoice for \$40.00, for two hours of cleaning the rental unit after the tenant vacated. Notes on the condition inspection report indicate that the fridge, stove and kitchen and bathroom mirrors required cleaning, and the patio door screen was hanging loose. It is also noted on the condition inspection report that the tenant only returned two of four keys.

Tenant's Response

The tenant stated that he moved out of the rental unit on June 4, 2016. The tenant acknowledged that he was holding two keys, one for the mailbox and one for the front door. The tenant submitted that it was not necessary for the landlord to wait to advertise. The tenant submitted that the landlord set the move-out inspection for June 15, 2016.

The tenant stated that at the time of entering into the tenancy agreement the landlord did not explain the liquidated damages clause, and the tenant did not look at or think about that clause.

The tenant stated at first he applied to cancel the two notices to end tenancy, but then he changed his mind. The tenant stated that on May 25, 2016 he gave the landlord notice that he would be moving out before the end of June 2016 because the landlord had breached the Act.

The tenant stated that he missed part of cleaning the oven, but that could have been cleaned in two minutes.

Analysis

I find that the landlord is entitled to part of his monetary claim.

The tenant did not dispute that he did not pay rent for May 2016. The tenant stated that he moved out of the unit on June 4, 2016. The landlord failed to prove, however, that he took reasonable steps to mitigate lost revenue for June and July 2016. The landlord ought to have taken steps to advertise the unit to re-rent as soon as possible, but he did not. It certainly was not necessary for the landlord to await the return of the keys before

taking steps to re-rent. I therefore find that the landlord is entitled to unpaid rent of **\$750.00** for May 2016, and I dismiss the landlord's claim for lost revenue for June and July 2016.

The landlord did not include the page of the tenancy agreement that he stated included the clause allowing for late fees. I therefore dismiss the landlord's claim for late fees. The landlord did not provide evidence to show why replacement keys would cost \$100.00. I therefore dismiss the landlord's claim for lost keys.

The landlord failed to provide evidence that the liquidated damages amount of \$400.00 was a genuine pre-estimate of the cost of re-renting, or that the tenant understood it as such at the time of entering into the agreement. I therefore dismiss the landlord's claim for liquidated damages.

The landlord did not provide sufficient evidence to establish that two hours of cleaning were required. However, the tenant acknowledged that he did not completely clean the stove, and I therefore grant the **landlord \$20.00** for cleaning.

As the landlord's application was partially successful, he is also entitled to recovery of the **\$100.00** filing fee for the cost of this application.

Conclusion

The landlord is entitled to \$870.00. I order that the landlord retain the security deposit of \$362.50 in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of **\$507.50**. 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: January 5, 2017

Residential Tenancy Branch