



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

MNDC, FF

Introduction

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

- a monetary order for loss pursuant to section 67; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, make submissions, call witnesses and present sworn testimony.

As both parties were present I attempted to confirm service of documents. The parties confirmed receipt of the tenant's application for dispute resolution. The landlord said that the tenant's evidentiary materials were not received 14 days prior to the hearing, in accordance with the Rules of Procedure and objected to their inclusion. As the tenant's evidence consists primarily of earlier decisions made by this Branch for separate applications made by the landlord under the file numbers indicated on the first page of this decision, I find that there is no prejudice to the landlord or a breach of the principles of natural justice in allowing their inclusion. In accordance with Rules of Procedure 3.17 and section 71(2)(c) of the Act, I find that the tenant's evidence was sufficiently served on the landlord.

Issue(s) to be Decided

Is the tenant entitled to a monetary award as claimed? Is the tenant entitled to recover the filing fee for this application from the landlord?

Background and Evidence

Two monetary orders in the landlord's favour were issued by this branch under the file numbers on the first page of this decision. A decision was made on April 27, 2016 as a result of a Direct Request proceeding where evidence is given by way of written submissions. The landlord was issued a monetary award in the amount of \$1,365.00 for unpaid rent for April, 2016. The landlord testified that the tenant has not made any payment for April, 2016 rent. The landlord was also provided with an Order of Possession enforceable two days after service.

A second monetary order was issued in the landlord's favour in the amount of \$775.00 dated November 29, 2016. The parties confirmed that the tenant has not made any payment to the

landlord for either of the two orders. The landlord said that the total amount of the monetary orders is \$2,140.00.

The parties gave evidence that the tenant paid the landlord \$1,365.00 on May 9, 2016. The payment was accepted for use and occupancy only for the month of May, 2016. The tenant moved out of the rental unit on May 15, 2016.

Analysis

Residential Tenancy Policy Guideline 3 provides that:

A tenant is not liable to pay rent after a tenancy agreement has ended...however if a tenant remains in possession of the premises (overholds), the tenant will be liable to pay occupation rent on a *per diem* basis until the landlord recovers possession of the premises.

I accept the undisputed evidence of the parties that the tenant vacated the rental unit on May 15, 2016 after paying \$1,365.00 towards May, 2016 rent. I find that the tenant was obligated to pay the occupation rent on a per diem basis for the period of May 1, 2016 to May 15, 2016 when the landlord recovered possession of the rental unit. I find that the tenant is entitled to recover the overpayment. I find that the tenant is entitled to a monetary award in the amount of \$682.50 for the overpayment.

As the tenant's application has some merit I allow the tenant to recover the filing fee for this application from the landlord.

Conclusion

The tenant is issued a monetary order in the amount of \$782.50.

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: September 5, 2017

Residential Tenancy Branch