



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNR, FF

Introduction

This hearing was convened in response to an application by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. A Monetary Order for unpaid rent - Section 67;
2. A Monetary Order for damage to the unit - Section 67; and
3. An Order to recover the filing fee for this application - Section 72.

The Landlords and Tenant were each given full opportunity under oath to be heard, to present evidence and to make submissions. The Witness gave evidence under oath.

Issue(s) to be Decided

Is the Landlord entitled to the monetary amounts claimed?

Background and Evidence

The following are agreed facts: The tenancy started on October 7 or 15, 2016 for a fixed term to end April 30, 2017. Rent of \$1,050.00 was payable on the first day of each month. At the outset of the tenancy the Landlord collected \$525.00 as a security deposit. The Parties mutually conducted a move-in inspection with a condition report completed and copied to the Tenant. There is no provision in the written tenancy agreement in relation to parking or late fees. The Landlord did not make any offers for a move-out inspection to the Tenant. The Tenant did not provide the Landlord with its forwarding address.

The Landlord states that the Tenant did not pay any rent for May 2017. The Landlord states that the Tenant’s Witness appeared at their door on May 1, 2017 with a note

stating that the rent would not be paid until May 14, 2017. The Landlord states that on May 5, 2017 the Landlord mailed the Tenant with a 10 day notice to end tenancy for unpaid rent. The Landlord states that Agent TB (the "Agent") drove by the unit and saw the Tenant move out of the unit. The Landlord states that the Tenant was not at the unit for three days and had left the unit unlocked so the Landlord changed the locks on May 16, 2017. The Landlord states that the Tenant failed to pay rent for May 2017 and the Landlord claims \$1,050.00.

The Tenant states that on May 1, 2017 she sent her Witness to the Landlord to pay the rent in the form of a cheque made out by a housing agency that was assisting the Tenant. The Witness states that he gave the Agent a one page letter folded in half with the cheque inside. The Witness states that the Agent was asked to sign an acknowledgement of the rent cheque being received by the Agent and that the Agent refused, giving the cheque and letter back to the Witness. The Agent states that she did not unfold the letter and that her daughter, the Landlord, told the Agent not to accept anything from the Tenant. I note that the Landlord provides a copy of a letter from the Tenant dated May 1, 2017 that references an enclosed cheque and a promise of future payment of remaining rent on May 14, 2017

The Tenant states that after receiving the 10 day notice on May 11, 2017 the Tenant did not attempt to pay the rent again and prepared to move out of the unit. The Tenant states that she decided to move out and not dispute the 10 day notice as the unit had mold inside. The Tenant states that the presence of mold was previously raised with the Landlord and the Landlord refused to inspect the unit. The Tenant states that she believed that the Landlord would not do anything to resolve the mold. The Tenant states that her son has a medical disability and a compromised immune system. The Tenant states that she was in the process of still moving and cleaning when she found the unit doors locked on May 19, 2017. The Tenant states that she still had food in the fridge along with toys and other household items. The Tenant states that she tried

several times to contact the Landlord but the Landlord would not communicate with the Tenant.

The Landlord states that the Tenant failed to leave the unit clean, left several bags of garbage and household items in the unit. I note that the photos provided by the Landlord show food in the fridge. The Landlord states that the Tenant left several walls with large nail holes and other holes and left a drawer and a door mirror broken. The Landlord states that it did the cleaning, repairs and hauling of garbage. The Landlord provides photos and a receipt for \$700.00. The Landlord states that the cleaning and repairs was done by a person whose last name the Landlord cannot recall. The Landlord did not provide an itemized invoice for the costs being claimed. The Tenant states that the mirror was broken at move-in and was on the inside of a closet door that was not seen during the inspection. The Tenant states that she was unable to clean the unit, make repairs or remove her belongings as the locks had been changed and the Landlord would not return calls.

The Landlord states that the Tenant damaged the back yard by driving and parking on the yard. The Landlord claims a "guestimated" repair cost of \$1,000.00. The Landlord states that the lawn has not been repaired and that the unit has since been rented for a higher rental amount. The Landlord confirms that no rental reduction was provided to the next renter for the damaged lawn.

Analysis

Section 7 of the Act provides that where a tenant does not comply with the Act, regulation or tenancy agreement, the tenant must compensate the landlord for damage or loss that results. In a claim for damage or loss under the Act, regulation or tenancy agreement, the party claiming costs for the damage or loss must prove, inter alia, that the damage or loss claimed was caused by the actions or neglect of the responding party, that reasonable steps were taken by the claiming party to minimize or mitigate the costs claimed, and that costs for the damage or loss have been incurred or established.

I consider the provision of the letter dated May 1, 2017, the Landlord's initial evidence of the contents of a letter delivered to the Landlord on May 1, 2017 and the Agent's evidence of not opening and therefore not knowing the contents of the letter or the presence of a cheque to be troublingly contradictory. As a result I prefer the Tenant's supported evidence of payment of at least some rent on time and the promise for remaining payment for May 2017. As the Landlord refused to accept even a partial rental payment, I find that the Landlord waived its right to the rent and has not substantiated that the Tenant breached the requirement to pay rent. I dismiss the claim for unpaid rent.

Section 90 of the Act provides that if a document is served by mail it is deemed to be received on the 5th day after it is mailed. Section 46(1) of the Act provides that a landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice. Section 57(2) of the Act provides that a landlord must not take actual possession of a rental unit that is occupied by an overholding tenant unless the landlord has a writ of possession issued under the Supreme Court Civil Rules. Section 57(1) of the Act defines "**overholding tenant**" as a tenant who continues to occupy a rental unit after the tenant's tenancy is ended.

Even if the Landlord sent the 10 day notice to end tenancy by mail on May 5, 2017, it would have been deemed to be received on May 10, 2016 and the effective date of the 10 day notice would be set or corrected to May 20, 2017. Based on the Landlord's evidence of service of the 10 day notice on May 5, 2017 I find that the Tenant was not overholding the unit on May 16, 2017. Considering that there is no evidence of the Landlord leaving a notice of entry prior to changing the locks and given the Landlord's evidence of having knowledge of the unit being unlocked for three days I infer that the Landlord entered the unit without right for three days prior to changing the locks. Even if the Tenant had left the unit unlocked, there is nothing in the Act or tenancy agreement that allows a Landlord entry to take possession of the unit in these circumstances and I do not consider that the Landlord provided evidence of abandonment since I consider that the Landlord had the ability to communicate with the Tenant by phone and the only evidence is that the Landlord avoided communication with the Tenant. Given that the tenancy had not ended and as the Landlord had neither an order nor writ of possession for the unit, I find that the Landlord breached the Act in taking possession of the unit.

As the Landlord caused the Tenant to not be able to access the unit I find that the Landlord prevented the Tenant from complying with the Act and may not now claim the Tenant's breach of the Act in relation to the condition of the unit. I dismiss the claim for repairs and cleaning. As the Landlord changed the locks without right I find that the Landlord has not substantiated that the Tenant caused the Landlord the costs for the keys and I dismiss this claim. As the Landlord did not incur any costs or rental losses due to the state of the yard I find that the Landlord has not substantiated the costs claimed and I dismiss this claim. As none of the Landlord's claims have had merit and given the significant breaches of the Act by the Landlord I decline to award recovery of the filing fee and in effect the application is dismissed in its entirety.

Policy Guideline #17 provides that a security deposit will be ordered returned on a landlord's application whether or not the tenant has applied for its return. As the

Landlord has no valid claim against the security deposit I order the Landlord to return the security deposit plus zero interest of **\$525.00** to the Tenant forthwith.

Conclusion

The Landlord's application is dismissed.

I grant the Tenant an order under Section 67 of the Act for **\$525.00**. If necessary, 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: November 17, 2017

Residential Tenancy Branch