



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding COLDWELL BANKER PRESTIGE REALTY
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNR, MNSD, MNDC, FF

Introduction

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

- A monetary order for unpaid rent and loss pursuant to section 67;
- Authorization to retain the security deposit for this tenancy in partial satisfaction of the monetary award pursuant to section 38; and
- Authorization to recover the filing fee from the tenant pursuant to section 72.

The tenant did not attend this hearing, which lasted approximately 10 minutes. The corporate landlord was represented by its agent HZ (the "landlord"), who was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

The landlord testified that the landlord's application for dispute resolution dated September 22, 2017 was sent to the tenant by registered mail to an address provided by the tenant on September 26, 2017. The landlord provided a Canada Post tracking number as evidence of service. I find that the tenant was deemed served with the landlord's application for dispute resolution and evidence package in accordance with sections 88, 89 and 90 of the Act on September 31, 2017, five days after mailing.

Issue(s) to be Decided

Is the landlord entitled to monetary compensation as claimed?

Is the landlord entitled to recover the filing fee for this application from the tenant?

Background and Evidence

The landlord provided undisputed evidence regarding the following facts. This fixed-term tenancy began in March, 2017. The monthly rent was \$2,800.00 payable on the first of each month. A security deposit of \$1,400.00 was collected at the start of the tenancy and is still held by the landlord.

The tenant gave notice to end the tenancy on July 5, 2017 and moved out of the rental unit on July 11, 2017. The tenant did not participate in a move-out inspection despite the landlord's attempt to contact and provide multiple opportunities to participate.

The landlord testified that at the end of the tenancy there was a rental arrear of \$8,400.00 as the tenant failed to pay rent for May, June and July, 2017. The landlord also seeks the rent for August, 2017 as the tenant did not provide sufficient notice to end the tenancy. The landlord said that immediately after being notified by the tenant they searched for a new occupant and found a new tenant beginning September, 2017.

The landlord gave evidence that the rental unit was in a state of disrepair requiring cleaning and repairs. The landlord said the cost of cleaning and maintenance is \$918.75. The landlord submitted receipts in support of their monetary claim.

The landlord seeks liquidated damage of \$1,400.00. The landlord submitted the tenancy agreement which provides that when a tenant end a fixed term tenancy before its term or provides less than a calendar months' notice, liquidated damage in the amount of \$1,400.00 is payable for the cost of finding a new tenant.

Analysis

Section 67 of the *Act* allows me to issue a monetary award for loss resulting from a party violating the *Act*, regulations or a tenancy agreement. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

The landlord provided undisputed evidence at this hearing, as the tenant did not attend. I find that the tenant was obligated to pay the monthly rent in the amount of \$2,800.00. I

accept the landlord's evidence that the tenant failed to pay any rent for the period of May, 2017 onwards. I accept the landlord's evidence that they were given notice by the tenant on July 5, 2017 and despite advertising the suite, were only able to find a new occupant for September, 2017. Based on all of the foregoing, I find that the landlord is entitled to a monetary award in the amount of \$11,200.00 for the unpaid rent for May, June, July and August, 2017.

I accept the landlord's undisputed evidence that the rental unit required cleaning and repairs. I accept the evidence that the cost of this maintenance was \$918.75. I issue a monetary award in that amount accordingly.

I accept the landlord's undisputed evidence that they incurred costs for re-renting the suite. I accept the evidence that the liquidated damage is an accurate estimate of the costs incurred. Accordingly, I issue a monetary award in the amount of \$1,400.00.

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

In accordance with sections 38 and the offsetting provisions of 72 of the *Act*, I allow the landlord to retain the tenant's \$1,400.00 security deposit in partial satisfaction of the monetary award issued in the landlord's favour.

Conclusion

I issue a monetary order in the landlord's favour in the amount of \$12,218.75 under the following terms, which allows the landlord to recover unpaid rent, damages and the filing fee for their application:

Item	Amount
Rental Arrears (May-August, 2017)	\$11,200.00
Cleaning Costs	\$918.75
Liquidated Damages	\$1,400.00
Filing Fees	\$100.00
Less Security Deposit	-\$1,400.00
Total Monetary Order	\$12,218.75

The tenant must be served with this Order as soon as possible. Should the tenant 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: April 24, 2018

Residential Tenancy Branch