



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* (the "Act") for:

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

The hearing was conducted by conference call. All named parties attended the hearing and were given a full opportunity to provide affirmed testimony and present evidence. The tenant acknowledged service of the landlord's application.

Issues

Is the landlord entitled to a monetary award for unpaid rent?

Is the landlord entitled to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary award requested?

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

Background and Evidence

The tenancy began on June 1, 2018 with a monthly rent of \$2800.00 payable on the 1st day of each month. The tenancy ended on September 30, 2019. The tenant paid a security deposit of \$1400.00 at the start of the tenancy which the landlord continues to hold.

The landlord is seeking \$2800.00 in unpaid rent for the final month of the tenancy September 2019. The landlord testified the tenant failed to pay rent for this last month.

The tenant claims the landlord told him the lease was not going to be renewed after September 2019 due to rental restrictions by strata and because the landlord had the unit up for sale. The tenant argues his last month should be free as the landlord was selling the unit and asked him to leave.

The landlord acknowledges that the unit was for sale but argues the unit was not sold at the time nor did the landlord issue any Notice to End tenancy to the tenant. The landlord testified that the issue of rental restrictions was sorted out with the strata and they did not ask the tenant to move out.

Analysis

Section 7 of the Act provides for an award for compensation for damage or loss as a result of a landlord or tenant not complying with this Act, the regulations or their tenancy agreement. Under this section, the party claiming the damage or loss must do whatever is reasonable to minimize the damage or loss.

Section 26 of the Act requires that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

Section 51 (1) of the Act provides that a tenant who receives a Notice to End Tenancy for landlord's use of property is entitled to receive from the landlord an amount that is equivalent to one month's rent payable under the tenancy agreement.

It was not disputed that the tenant was never served with a Notice to end Tenancy for landlord's use of property. The unit merely being listed for sale does not trigger the one-month compensation requirement under section 51 of the Act.

I find the tenant failed to pay rent for September 2019 and as such the landlord has suffered a loss as claimed in the amount of \$2800.00.

As the landlord was successful in this application, I find that the landlord is entitled to recover the \$100.00 filing fee paid for this application for a total monetary award of \$2900.00.

The landlord continues to hold a security deposit and pet deposit in the amount of \$1400.00. I allow the landlord to retain the security deposit and pet deposit in partial satisfaction of the monetary award pursuant to section 38 of the Act.

Therefore, I find that the landlord is entitled to a Monetary Order in the amount of \$1500.00.

Conclusion

Pursuant to section 67 of the *Act*, I grant the landlord a Monetary Order in the amount of \$1500.00. 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: February 24, 2020

Residential Tenancy Branch