



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 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. An Order to retain the security deposit - Section 38; and
3. An Order to recover the filing fee for this application - Section 72.

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

Preliminary Matters

The Tenant confirms receipt of the Landlord’s evidence. The Tenant confirms that a copy of its evidence provided to the Residential Tenancy Branch (the “RTB”) for this hearing was not given to the Landlord.

Rule 3.15 of the RTB Rules of Procedure provides that a respondent to an application must serve the applicant with any evidence it intends to rely on at the hearing. As the Tenant did not serve the Landlord with its documentary evidence, I decline to consider this evidence.

It was noted that the Landlord included a claim for the costs of cleaning the unit. No claim for damages to the unit was made in the application and no amendment to the application was made to add this claim.

Rule 2.3 of the RTB Rules of Procedure provides that claims are limited to what is stated in the application. As the Landlord's application does not include a claim for damages to the unit and as the Landlord made no amendment to its application to add a claim for damages to the unit, I find that the Landlord may not now have its claim for damages to the unit considered and I dismiss that claim.

The Landlord seeks to amend its application to increase its claim for unpaid rent. It is noted that the Landlord claimed unpaid rent for October 2019. The Parties confirmed that the Tenant moved out of the unit on September 30, 2019.

Section 44(1)(d) of the Act provides that a tenancy ends where the tenant vacates or abandons the rental unit. No further rent is payable where a tenancy ends. Although the Landlord claims unpaid rent, I accept that this was an error as the Tenant did not occupy the unit for October 2019 and that the Landlord should therefore have claimed lost rental income as compensation for that month. Given that the Landlord made an error and as the application notes the details of this claim for rental monies for October 2019, I will consider the unpaid rent claim in the application as a claim for lost rental income.

Rule 4.2 of the RTB Rules of Procedure provides that in circumstances that can be reasonably anticipated, such as when the amount of rent owing has increased since the time the application was made, the application may be amended at the hearing. As no further rent became owing since the time of the Landlord's application and as lost rental income cannot be reasonably anticipated as increasing unpaid rent, I find that there are no reasonable circumstances to allow an amendment at the hearing. The Landlord's

request to amend the application to increase the lost rental income being sought is therefore refused.

Issue(s) to be Decided

Is the Landlord entitled to unpaid rent?

Is the Landlord entitled to retain the security deposit?

Is the Landlord entitled to recovery of the filing fee?

Relevant Background and Evidence

The following are agreed facts: The tenancy under written agreement started on September 1, 2019 on a fixed term to end June 30, 2020. At the outset of the tenancy the Landlord collected a security deposit of \$550.00. Rent of \$1,050.00 was payable on the first day of each month. On September 23, 2019 the Tenant gave written notice to end the tenancy and moved out of the unit by September 30, 2019. The Landlord received the Tenant's forwarding address on October 6, 2019. The Tenant does not dispute the Landlord's claim of \$1,050.00 for lost rental income and does not dispute the Landlord's claim for a lease break fee of \$100.00.

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. Given that the Tenant did not dispute the Landlord's claims for lost rental income and the lease break fee, I find that the Landlord has substantiated an entitlement to **\$1,050.00** and **\$100.00**. As the Landlord's claim has met with success, I find that the Landlord is also entitled to recovery of the **\$100.00** filing fee for a total entitlement of **\$1,250.00**. Deducting the security deposit of **\$550.00** plus zero interest leaves **\$700.00** owed by the Tenant to the Landlord.

Conclusion

I Order the Landlord to retain security deposit plus interest of \$550.00 in partial satisfaction of the claim and I grant the Landlord an order under Section 67 of the Act for the remaining amount of **\$700.00**. 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 RTB under Section 9.1(1) of the Act.

Dated: February 18, 2020

Residential Tenancy Branch