



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR MNDC MNSD FF / MNDC OLC RPP AAT AS

Introduction

This hearing was convened in response to cross-applications by the parties pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

Landlord:

- a monetary order for unpaid rent pursuant to section 67;
- a monetary order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement 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.

Tenant:

- a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- an order requiring the landlord to comply with the Act, regulation or tenancy agreement pursuant to section 62;
- an order requiring the landlord to return the tenant’s personal property pursuant to section 65;
- an order to allow access to or from the rental unit or site for the tenant or the tenant’s guests pursuant to section 70;
- an order allowing the tenant to assign or sublet because the landlord’s permission has been unreasonably withheld pursuant to section 65;
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

The hearing was conducted by conference call. All named parties attended the hearing and were given a full opportunity to be provide affirmed testimony, to present evidence and to make submissions.

At the outset of the hearing, the landlord confirmed that Q.M.T was the only tenant named in the tenancy agreement. Therefore, the tenant's application has been amended to remove all other individuals named as tenants.

Preliminary Issue: Service of Respective Application

The landlord was not served with a copy of the tenant's application. The tenant confirmed she only submitted an application to the Residential Tenancy Branch and did not provide a copy to the landlord.

The tenant's application is dismissed in its entirety with leave to reapply.

The tenant testified that she was not served with the landlord's application.

The landlord testified that on April 13, 2022, a copy of the Application for Dispute Resolution and Notice of Hearing was sent to the tenant by registered mail to a forwarding address provided by the tenant. A registered mail tracking number was provided in support of service.

Based on the above evidence, I am satisfied that the tenant was served with the Application for Dispute Resolution and Notice of Dispute Resolution Hearing pursuant to sections 89 & 90 of the Act.

The hearing proceeded on the merits of the landlord's application only.

Issues

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

Is the landlord entitled to retain the tenant's security deposit?

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

Background and Evidence

The tenancy began on January 15, 2022. The monthly rent was \$1600.00 payable on the 1st day of each month. A security deposit of \$800.00 was paid at the start of the tenancy which the landlord continues to retain.

The landlord testified that the tenant provided notice to vacate via text message on February 17, 2022, with a move-out date of February 28, 2022. The landlord testified the tenant was advised they were not accepting the notice and were provided with an option to move out end of March 2022, but the tenant refused. The landlord testified the tenant and other occupants moved all their belongings on February 27, 2022, but left behind a sofa and a table. The landlord submitted video evidence of the tenant and other occupants moving furniture on February 27, 2022. The landlord testified they provided the tenant with two opportunities for a move out inspection and the tenant did not complete even after confirming the second date and time.

The landlord is claiming unpaid rent for March 2022.

The tenant testified that on February 27, 2022, she advised the landlord that she would like to keep the unit and not move-out. The tenant testified that she was just late arriving to the March 3, 2022, move-out inspection and the landlord refused to allow her on the property and changed the locks. The tenant confirmed that rent was not paid for March 2022.

In reply, the landlord argued that the tenant agreeing to the move-out inspection shows that her intention was not to continue the tenancy. The landlord submits rent was not paid for March 2022 and the tenant moved out most of her belongings therefore the landlord considered the unit abandoned.

Analysis

Section 45(1) of the Act sets out that:

A tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that

(a) is not earlier than one month after the date after the landlord receives the notice, and

(b) is before the day in the month...that rent is payable under the tenancy agreement.

A notice given under this section must be in writing and comply with the form and content requirements of section 52 of the Act.

The tenant provided a notice to the landlord on February 17, 2022, to end the tenancy effective February 28, 2022. The earliest possible effective date for the tenant's notice to end this periodic tenancy pursuant to section 45 of the Act was March 31, 2022. The tenant did not provide sufficient notice to end the tenancy; therefore, the tenant was still responsible to pay rent for March 2022.

The tenant's testimony of wanting to continue the tenancy but being locked out by the landlord is simply not consistent with the facts. The tenant provided notice to vacate, was observed by the landlord removing belongings, the tenant did not pay rent for March 2022 and the tenant agreed to a move out inspection date. I find the tenant had no intention to continue this tenancy.

I accept the landlord's claim for loss of rent in the amount of **\$1600.00** for the month of March 2022.

As the landlord was successful in his application, I find that the landlord is entitled to recover the **\$100.00** filing fee paid for his application.

I allow the landlord to retain the \$800.00 security deposit in partial satisfaction of the monetary award.

The landlord is therefore granted a monetary order for the balance of \$900.00.

Conclusion

Pursuant to section 67 of the *Act*, **I grant the landlord a Monetary Order in the amount of \$900.00.** 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: June 07, 2022

Residential Tenancy Branch