



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes MNR, MNDC, MNSD, FF

Introduction

This hearing dealt with the landlord's application for a Monetary Order for unpaid rent and utilities, damage or loss under the Act, regulations or tenancy agreement, retention of the security deposit, and recovery of the filing fee. Both parties appeared at the hearing and were provided the opportunity to be heard and to respond to the submissions of the other party.

Issues(s) to be Decided

1. Is the landlord entitled to a monetary order for unpaid rent and utilities, cleaning, and NSF charges?
2. Retention of the security deposit.
3. Award of the filing fee.

Background and Evidence

I heard undisputed testimony as follows. The one year fixed term tenancy commenced September 1, 2008 and the tenants were required to pay rent of \$895.00 on the 1st day of the month. The tenants paid a \$447.50 security deposit on August 11, 2008. A move-in and move-out inspection was done with the tenants. The tenants agreed to pay for carpet cleaning and suite cleaning on the move-out inspection report.

Loss of rent

The landlord is claiming loss of rent for September 2009 on the basis the tenancy agreement provides that at the end of the one year fixed term the tenancy converted to a month-to-month tenancy and the tenants did not give written notice to end their tenancy until August 31, 2009. The landlord acknowledged a conversation between the tenant and property manager in July 2009 about the tenants vacating; however, the landlord asserted that the tenants were told at that time they needed to provide 30 days of written notice. Without the written notice the landlord did not begin efforts to re-rent the unit and incurred a loss of rent for September 2009.

The tenants submitted that they believed the tenancy ended at the end of the fixed term and they would have to sign a new lease or vacate the rental unit at the end of the term. The tenants claim they vacated the rental unit August 1, 2009 and paid rent for an empty unit for August 2009. The tenants also claimed that the property manager had been aware of their upcoming departure during a unit inspection in July 2009. The tenants explained that they gave the written letter of August 31, 2009 because they had not heard from the property manager about setting up a move-out inspection.

Cleaning

The tenants agreed to pay the \$120.00 carpet cleaning charge and the \$75.00 suite cleaning charge claimed by the landlord.

Hydro charges

The landlord submitted hydro bills received in June and August and claimed that the tenants' portion of these bills is \$72.80 and \$37.47 respectively. The tenants agreed they incurred these costs but were of the position that they had not been notified of the charges until the landlord made this application. The landlord also estimated \$30.00 for the period of August 7 to 31, 2009 at the time of making this application. The landlord subsequently calculated the tenants' portion of the hydro was much less; however, the landlord did not submit a copy of the subsequent hydro bill as evidence for this hearing.

The tenants did not feel obligated to pay hydro for days they did not occupy the rental unit.

NSF charges

The landlord claimed \$25.00 for an NSF charge related to the payment of June 2009 rent. The tenant explained the rent cheque was written on the wrong account and the tenant replaced the cheque with cash and did pay an additional amount for NSF charges already.

Evidence

As evidence for the hearing, the landlord provided a copy of the move-out inspection report, the tenants' letter of August 31, 2009, the NSF cheque, and hydro bills for June 5 and August 6, 2009. Both parties agreed that there was a written tenancy agreement but the tenancy agreement was not provided in the landlord's evidence package. Both parties agreed a move-in inspection report was prepared; however, a copy of the move-in inspection report was not provided in the landlord's evidence package.

The landlord offered to fax me a copy of the tenancy agreement; however, I refused to permit the landlord to submit the documentation since the landlord had ample opportunity to supply such evidence before the hearing commenced and since the landlord had not served the evidence upon the tenants for their review.

Analysis

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in section 7 and 67 of the Act. Accordingly, an applicant must prove the following:

1. That the other party violated the Act, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

Loss of rent

As the parties were informed during the hearing, with respect to a fixed term tenancy, the tenancy agreement must indicate what happens at the end of the fixed term. At the end of a fixed term, the tenancy may continue on a period basis (ie: month-to-month) or the tenants must vacate the rental unit. If the tenancy agreement provides that the tenants are to vacate the rental unit at the end of the fixed term, the tenants are not required to give written notice to end tenancy to the landlord.

Since this is the landlord's application, the landlord has the burden to prove the tenants violated the tenancy agreement or Act. Without a copy of the tenancy agreement provided as evidence and since the parties were of different positions with respect to what was to happen at the end of the fixed term, I found the landlord failed to sufficiently prove the claim for loss of rent.

Cleaning

The tenants are required to leave the rental unit in a reasonably clean condition at the end of the tenancy. As the tenants agreed to pay for the cleaning costs claimed by the landlord, I award the landlord the \$120.00 and \$75.00 claimed for carpet cleaning and suite cleaning.

Hydro charges

As it was not in dispute that the tenants were responsible for paying 40% of the hydro bills and the tenants did not show they had paid the June and August bills, I award the landlord \$72.80 and \$37.47 claimed for these bills. I do not award the landlord the

estimated cost for August 7, 2009 onwards as I found the landlord did not provide sufficient evidence of the costs incurred.

NSF charges

Under section 7 of the regulations, a landlord may recover from the tenant a NSF fee charged by the landlord's financial institution or a landlord may charge a \$25.00 administrative charge for NSF cheques. If the \$25.00 administrative fee is charged, the tenancy agreement must provide for such a fee. In the absence of the tenancy agreement as evidence, I do not find the landlord substantiated an entitlement to charge this amount to the tenants. The landlord's documentary evidence did not indicate their financial institution charged the landlord a \$25.00 fee to the landlord. Therefore, I deny this portion of the landlord's claim.

Filing fee

The landlord was unsuccessful for the majority of the claim and was awarded only those amounts the tenants agreed that they owed; therefore, I do not award the filing fee to the landlord.

Security deposit

The landlord is authorized to deduct the following amounts from the security deposit and is ordered to return the balance to the tenants forthwith:

Security deposit and accrued interest	\$449.74
Less: Carpet cleaning	(120.00)
Suite cleaning	(75.00)
Hydro charges to June 5/09	(72.80)
Hydro charges to August 6/09	<u>(37.47)</u>
Balance payable to tenants	<u>\$144.47</u>

The tenants have been provided a Monetary Order in the amount of \$144.47 to ensure the landlord pays the tenants \$144.47 forthwith.

Conclusion

The landlord was partially successful in this application and has been awarded cleaning costs and hydro charges that may be deducted from the security deposit. The landlord has been ordered to return \$144.47 to the tenants forthwith and the tenants have been provided a Monetary Order to ensure payment is made.

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, 2010.

Dispute Resolution Officer