



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 tenants' security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover the filing fee for this application from the tenants pursuant to section 72.

The tenants did not attend this hearing, although I waited until 11:10 a.m. in order to enable them to connect with this hearing. The landlord attended the hearing and was given a full opportunity to be heard, to present evidence and to make submissions. The landlord testified that on September 21, 2011 the tenants provided their notice to end this tenancy on September 28, 2011 by way of a telephone message and a subsequent fax. The landlord testified that she sent the tenants copies of the landlord's dispute resolution hearing package by registered mail on October 6, 2011 to the forwarding address provided by the tenants when they vacated these rental premises. The landlord provided a copy of the Canada Post Tracking Numbers to confirm these mailings. I am satisfied that the landlord served this package to the tenants in accordance with the *Act*.

Issues(s) to be Decided

Is the landlord entitled to a monetary award for unpaid rent? Is the landlord entitled to retain all or a portion of the tenants' security deposit in partial satisfaction of the monetary award requested? Is the landlord entitled to recover the filing fee for this application from the tenants?

Background and Evidence

This periodic tenancy commenced on February 1, 2011. Monthly rent was set at \$1,200.00, payable in advance on the first of each month. The landlord continues to hold the tenants' \$600.00 security deposit and \$600.00 pet damage deposit, both paid on January 15, 2011.

The landlord entered into written evidence a copy of the January 28, 2011 joint move-in condition inspection report and the September 30, 2011 condition inspection report conducted by the landlord without the tenants' participation.

The landlord applied for a monetary award of \$1,517.00 for the following items noted on the landlord's move-out condition inspection report of September 30, 2011:

Item	Amount
Loss of Rent October 2011	\$1,200.00
Carpet Cleaning	95.00
Rubbish Removal	150.00
Cleaning	72.00
Total Monetary Award Requested	\$1,517.00

At the hearing, the landlord said that she did not submit the receipt for the carpet cleaning as this cleaning was only completed in the second week of November and she has not yet received the bill for that expense. She said that she has bills for \$131.04 in cleaning (which exceeded the \$72.00 cited on the move-out inspection report and the application for dispute resolution) and \$150.00 for rubbish removal. Neither of these bills were entered into written evidence by the landlord.

Analysis

The landlord did not submit a claim for a monetary award for damage or damage and loss arising out of this tenancy, nor did the landlord submit receipts to substantiate expenses incurred as a result of the tenants' failure to clean the rental premises at the end of their tenancy. Consequently, the only application for a monetary award currently before me and for which the landlord has made a claim against the tenants' pet damage and security deposits is for unpaid rent for October 2011. This claim resulted from the tenants' late notification that they were ending this tenancy by September 28, 2011.

Section 7(1) of the *Act* establishes that a tenant who does not comply with the *Act*, the regulations or the tenancy agreement must compensate the landlord for damage or loss that results from that failure to comply. Section 45(1) of the *Act* requires a tenant to end a periodic tenancy by giving the landlord notice to end the tenancy the day before the day in the month when rent is due. In this case, in order to avoid any responsibility for rent for October 2011, the tenants would have needed to provide their notice to end this tenancy in writing before September 1, 2011. As this did not occur, I find that the tenants did not comply with the provisions of section 45(1) of the *Act*.

Section 7(2) of the *Act* places a responsibility on a landlord claiming compensation for loss resulting from a tenant's non-compliance with the *Act* to do whatever is reasonable to minimize that loss. Based on the evidence presented, I accept that the landlord did attempt to the extent that was reasonable to re-rent the premises for October 2011. The landlord entered into written evidence a copy of a letter sent to the tenants advising that the landlord would try to re-rent the premises for October 2011. The landlord testified that she placed advertisements on Craigslist but was unable to rent the premises to another tenant until November 15, 2011. I am satisfied that the landlord has discharged the duty under section 7(2) of the *Act* to minimize the tenants' loss.

I find that the landlord is entitled to recover \$1,200.00 in unpaid rent for October 2011 from the tenants. I allow the landlord to recover this amount by retaining the tenants' pet damage and security deposits plus interest. No interest is payable over this period. Since the landlord has been successful in this application, I allow the landlord to recover the \$50.00 filing fee for this application from the tenants.

Conclusion

I issue a monetary Order in the landlord's favour in the amount of \$50.00 which allows the landlord to recover the filing fee for this application from the tenants. The landlord is also allowed to keep the tenants' pet damage and security deposits to offset the \$1,200.00 in unpaid rent that the landlord lost for October 2011. The landlord is provided with these Orders in the above terms and the tenant must be served with a copy of these Orders as soon as possible. Should the tenant fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders of that Court.

As the landlord did not apply for a monetary award for damage or damage and loss arising out of this tenancy, I make no decision regarding the cleaning, carpet cleaning or rubbish removal cited in the details of the landlord's application. The landlord is at liberty to apply for a monetary award for these items.

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: December 19, 2011

Residential Tenancy Branch