



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MNSD, FF

Introduction

This hearing was scheduled to deal with the landlord's application for a Monetary Order for unpaid rent; authorization to retain the security deposit, and recovery of the filing fee. Both parties appeared at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

The landlord's application included reference to an attached sheet in the details of dispute. The attached documents indicate the landlord is also seeking compensation for damage to the rental unit and damages or loss under the Act, regulations or tenancy agreement. Therefore, I have amended the landlord's application to indicate such requests.

I was satisfied the landlord increased the monetary claim by way of an amended the application made in accordance with the Act and Rules of Procedure. Therefore, I have considered the amounts claimed on the amended application and as detailed in the attached documents.

Issue(s) to be Decided

1. Has the landlord established an entitlement to compensation for unpaid rent or loss of rent for the months of September 2011 through December 2011?
2. Has the landlord established an entitlement to liquidated damages?
3. Has the landlord established an entitlement to compensation for damage to the rental unit?
4. Is the landlord authorized to retain all or part of the security deposit?

Background and Evidence

The parties entered into a tenancy agreement for a tenancy set to commence May 1, 2011 for a fixed term set to expire April 30, 2012. The tenants paid a security deposit of \$1,100.00 and were required to pay rent of \$2,200.00 on the first day of every month.

On July 21, 2011 the tenants sent an email to the landlord's office advising the landlord they intended to end the tenancy effective August 31, 2011 but they could vacate by July 29, 2011 if new tenants were secured. The tenants vacated the rental unit at the end of July 2011 and paid rent for August 2011. A move-out inspection was conducted by the parties on September 1, 2011 and the landlord prepared an inspection report but the tenant would not sign the move-out inspection report as he did not agree with the landlord's assessment of the property.

By way of the amended application, the landlord is seeking compensation for the following amounts:

Unpaid rent: September 2011 through December 2011	\$8,800.00
Liquidated damages – per tenancy agreement	550.00
Carpet cleaning	89.60
Suite cleaning and light bulbs	169.05
Wall repairs	<u>200.00</u>
Total	\$9,808.65

Unpaid Rent

The landlord made the following submissions: Upon returning from vacation on August 4, 2011 she phoned the tenants to inform them that they had an obligation to fulfill the terms of the tenancy agreement. The tenants informed her they had purchased a condo and the landlord proceeded to advertise the rental unit that day. The landlord's advertising efforts included on-line advertising and newspaper advertisements. Newspaper advertisements were frequent at first but the newspaper advertisements were expensive and reduced to once per week. The landlord submitted that the advertised rental rate was also reduced in \$50.00 increments in an effort to attract new tenants.

The tenants submitted that they enquired about their obligations in order to end their tenancy by phoning the landlord's office in mid-July 2011. The landlord was on vacation and the landlord's receptionist put the tenants through to a staff person the tenants thought was handling the landlord's accounts. The tenants claim that the staff person informed the tenants they only needed to give a month's notice which they did via email. The tenants acknowledge the landlord phoned them on August 4, 2011 and there was a discussion about their obligations under the tenancy agreement; however, by that time they had already put in motion the purchase of their condo.

The landlord responded by stating the person the tenants spoke to in July was an administrative assistant and that the tenants could have spoken to another property

manager in her absence. The tenants rebutted the landlord's position by claiming the staff person they spoke to normally handled end of tenancies and if they were to speak to a property manager then they should have been referred to one by the landlord's staff person.

The tenants also responded by stating they received a letter from the landlord's office instructing them to vacate by August 31, 2011 and they complied with that requirement. The landlord explained that the letter the tenants are referring to is a standard letter and is sent to tenants who have given notice to end tenancy. Its purpose is to inform tenants of their cleaning obligations and other obligations the landlord considers necessary before a tenant vacates.

The tenants submitted that they looked for the landlord's advertisements after they gave notice and they did not see any during July or early August as claimed by the landlord. The tenants submitted that at one point the landlord told them she was waiting to get a key for the rental unit before she could show the unit. The tenants stated they never denied access for showings. The landlord acknowledged she did not have a copy of the key to the rental unit.

Liquidated damages

The tenancy agreement provides a clause for liquidated damages in the amount of \$550.00. The clause provides, in part:

5. LIQUIDATED DAMAGES. If the tenant ends the fixed term tenancy...the tenant will pay to the landlord the sum of \$550.00 as liquidated damages and not as a penalty. Liquidated damages are an agreed pre-estimate of the landlord's costs of re-renting the rental unit and must be paid in addition to any other amounts owed by the tenant, such as unpaid rent or for damage to the rental unit or residential property.

The tenants submitted that this claim represents the landlord's attempt to retain more of the security deposit.

Carpet cleaning

The tenancy agreement provides that if carpets are new or were professionally cleaned at the start of the tenancy the tenant will pay for professional cleaning at the end of the tenancy. The landlord submitted that the rental unit was brand new and the tenants were the first to occupy the unit.

The tenants submitted that the unit was vacant for months prior to their tenancy and that the unit had been viewed by prospective purchasers and renters before they moved in. The tenants submitted that the carpets were left clean when they vacated.

Suite cleaning and light bulbs

The landlord provided a written statement of the person hired to clean and repair deficiencies in the rental unit at the end of the tenancy. The landlord was charged for 5 hours at \$25.00/hr plus \$12.00 for supplies and \$32.05 for bulbs and nuts.

The tenants submitted that the rental unit had several minor deficiencies as a result of the unit being newly built, not from their tenancy. The tenants submit that only two light bulbs were burnt out. The tenants were of the position they cleaned the rental unit well.

The landlord responded by stating the tenants left foot prints on the floors, the windows and the balcony was not cleaned, and more than two bulbs were burnt out.

Wall repair

The landlord submitted that there are two screw holes in the living room and damage in the second bedroom. The landlord has estimated the repair to cost \$200.00. The repairs have not been completed yet.

The tenants acknowledge two screw holes in the living room where the TV is mounted but explained that it is likely the next tenant will mount their TV in the same place since all the TV connections are in that location. The tenant acknowledged that the wall in the second bedroom was damaged by their son but that the tenants repaired it.

The landlord responded by stating the paint applied by the tenant did not match the wall colour. The tenants acknowledged there may have been a minor difference in colour.

As documentary evidence for this proceeding the landlord provided copies of: the tenancy agreement; condition inspection reports; cleaning invoice, carpet cleaning invoice, and the email from the tenants giving notice to end tenancy.

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.

Upon consideration of all of the evidence before me I provide the following reasons and findings with respect to each of the landlord's claims.

Unpaid rent

I am satisfied the tenants breached their fixed term tenancy agreement by ending the tenancy early. I am satisfied the tenants notified the landlord of their intent to end the tenancy August 31, 2011 by way of an email sent to the landlord's office in July 2011 and confirmed with the landlord during the subsequent conversation with the tenants on August 4, 2011. Yet, the rental unit remains vacant and available for rent as of the day of this hearing.

Where a rental unit is available for rent for several months the issue of mitigation is paramount, as provided in part 4. of the test outlined above. The tenants raised the question as to when advertising efforts commenced. The landlord did not provide any documentary evidence to demonstrate when advertising commenced, the frequency of advertisements, the content of the advertisements, or the amount advertised as the rental rate at which times. Where a landlord is claiming several months of loss of rent I find it reasonable to expect that the landlord would provide copies of at least some of the advertisements, receipts for advertising costs, or a schedule as to timing and placement of various advertisements and at what rental rate.

Considering the landlord's claim for several months of loss of rent and the lack of documentary evidence I find I am not satisfied that the landlord has demonstrated that sufficient efforts were made to minimize rental losses. Therefore, I do not award the landlord any loss of rent for September 2011 and onwards and this portion of the landlord's claim is dismissed without leave.

Liquidated damages

Residential Tenancy Policy Guideline 4 provides for liquidated damages. A liquidated damages clause is a clause in a tenancy agreement where the parties agree in advance the damages payable in the event of a breach of the fixed term by the tenant. If a liquidated damages clause is determined to be valid, the tenant must pay the stipulated sum unless the sum is found to be a penalty. I find the amount payable under the

clause to be a reasonable pre-estimate and it is not a penalty. Therefore, I grant the landlord's request to recover liquidated damages of \$550.00 from the tenants.

Carpet cleaning

The parties agreed by way of signing the tenancy agreement that the tenants would professionally clean the carpets at the end of the tenancy if the carpets were new at the beginning of the tenancy. The tenants suggested the carpets were not exactly new as the unit had been vacant and shown to prospective buyers and tenants before their tenancy commenced. However, the move-in inspection report includes the following notation "suite brand new and use furniture felts on HW".

Section 21 of the Residential Tenancy Regulation provides that in dispute resolution proceedings, a condition inspection report completed in accordance with this Part is evidence of the state of repair and condition of the rental unit or residential property on the date of the inspection, unless either the landlord or the tenant has a preponderance of evidence to the contrary.

I find the move-in condition inspection report, which was signed by the tenant agreeing to the landlord's assessment, satisfies me that the carpeting was considered new by the parties at the beginning of the tenancy. Therefore, I award the carpet cleaning cost of \$89.60 to the landlord.

Suite cleaning and bulbs

When a landlord prepares a move-out inspection report and the tenant does not agree with the landlord's assessment there is space provided for the tenant to state the tenant's reasons for not agreeing with the landlord's assessment. I give disputed verbal testimony that is provided several months after the tenancy ended less evidentiary weight that what was recorded at the time of moving out. Therefore, I accept the move-out inspection is the best evidence as to the condition of the rental unit at the end of the tenancy.

In comparing the move-out inspection report to the cleaner's invoice I note that several tasks performed by the cleaner were not noted on the move-out inspection report, such as reattaching drain plugs and stove drawer wheels. I find the additional tasks not noted on the move-out inspection can be reasonably explained by the deficiencies described by the tenant and attributed to the fact this was a new unit that was never lived in before the tenancy.

In light of the above considerations, I estimate the cleaning portion of the invoice that is attributable to the tenants to be 50%. Therefore, I award the landlord \$84.50 for cleaning, supplies and bulbs.

Wall repair

It was undisputed that there are two screw holes where the TV was mounted and a slight mismatch in paint colour in the second bedroom. However, the landlord bears the burden to verify the value of the loss claimed. Estimates, receipts or invoices are verification and should be provided unless such documents are not obtainable, in which case another reasonable basis will be considered.

In the absence of photographs or an estimate I find the evidence before me as to the value of the loss is underwhelming. When I consider that the landlord has not yet completed the repairs, when the unit is vacant and subject to showings to prospective tenants, I find it likely the damage is minor. Therefore, I find the landlord has not provided sufficient evidence that the loss associated to the wall damage is \$200.00 as claimed.

I find a reasonable award the landlord to be \$50.00 based upon the evidence before me.

Monetary Order and security deposit

Based upon my findings above, the landlord has established an entitlement to compensation of \$774.10 [\$550.00 liquidated damages + \$89.60 carpet cleaning + \$84.50 general cleaning + \$50.00 wall repairs]. I further award the landlord a portion of the filing fee paid for this application for a total award of \$800.00.

Since the landlord holds the tenants' \$1,100.00 security deposit I authorize the landlord to deduct \$800.00 from the deposit and order the landlord to return the remainder of \$300.00 to the tenants forthwith.

As per Residential Tenancy Policy Guideline 17, I provide the tenants with a Monetary Order for the remaining portion of the security deposit.

Conclusion

The landlord has been awarded a total of \$800.00 in satisfaction of this application. The landlord must return the remainder of the tenants' security deposit in the amount of \$300.00 to the tenants forthwith. The tenants are provided a Monetary Order in the amount of \$300.00 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: December 07, 2011.

Residential Tenancy Branch