



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MND, MNDC, MNSD, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord for a monetary order for unpaid rent or utilities, damages to the unit site or property, compensation for damages and losses, recovery of the filing fee and an order to keep the security deposit and pet damage deposit.

The Landlord provided affirmed testimony that they served each of the Tenants, by registered mail with the Application for Dispute Resolution and Notice of Hearing on December 07, 2011, and provided the customer receipt/tracking slips from Canada Post as evidence. I find that the Tenants were each served the Application and Notice of Hearing in accordance with section 88 of the Residential Tenancy Act (the "Act").

The Tenants did not participate in the conference call hearing. The Landlord was given full opportunity to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Is the Landlord entitled to a monetary order for unpaid rent or utilities, damages to the unit site or property, compensation for damages and losses, recovery of the filing fee and an order to keep the security deposit and pet damage deposit?

Background and Evidence

The Landlord testified that they had a written tenancy agreement with the Tenants from August 15, 2010 to August 31, 2011 with a monthly rent of \$1,000.00 due in two payments, \$500.00 on the 1st of the month and \$500.00 on the 15th of the month. The Landlord stated that the tenancy agreement also states that the tenancy will pay the phone bill for the rental unit. The Landlord provided a copy of the tenancy agreement into evidence. The Landlord stated that the rental unit is a house with yard. The Landlord stated that a move-in inspection report was done with the Tenants at the start of the tenancy. The Landlord stated that the Tenants paid a \$500.00 security deposit and a \$500.00 pet damage deposit when the tenancy commenced. The Landlord

stated that the Tenants abandoned the rental unit on or around August 31, 2011, without providing the Landlord with their move out date, as a result a move out inspection could not be done with the Tenants. The Landlord stated that the Tenants have not requested return of their deposits or filed an application for dispute resolution.

The Landlord stated that the Tenants did not provide a written forwarding address, but verbally advised the Landlord that they would be living at their mother's address and provided that address by phone. The Landlord stated that the Tenants are still living at their mother's address as the Landlord has called them at that address to request amounts owed at the end of the tenancy.

The Landlord stated that the Tenants were in rent arrears when the tenancy ended, and that they owe \$2,450.00 in unpaid rent for June, July, and August 2011. The Landlord provided a written statement of the rent arrears into evidence and copies of the rent receipts for payments during the tenancy.

The Landlord stated that the Tenants were in arrears with the phone bills when the tenancy ended and that they owed the Landlord for phone bills in the amount of \$389.00. The Landlord provided documented evidence relating to the phone bills.

The Landlord stated that the rental unit was cleaned and freshly painted prior to the Tenants moving in. The Landlord stated that the Tenants left the house and property in dirty condition and that no cleaning was done by the Tenants prior to the tenancy ending. The Landlord stated that the Tenants made holes in the walls during their tenancy which the Landlord had to patch and paint over. The Landlord stated that the Tenants left garbage and debris at the house and on the property. The Landlord provided photographic evidence of the condition of the rental unit at move-out and a copy of the receipt they paid to a contractor for the cleaning, repairs and painting costs they incurred in relation to the rental unit in the amount of \$1,820.00.

The Landlord is requesting reimbursement by the Tenants for the costs to develop the photos (\$27.00) for evidence for this hearing and for the Canada post registered mailing costs (\$20.94).

The Landlord is also requesting to recover the \$50.00 filing fee for his Application.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

Section 26 of the Act requires a tenant to pay rent when it is due under the tenancy agreement. In this case, the tenancy agreement between these parties is that rent is due in two payments on the first and fifteenth of the month. I accept the Landlord's evidence and undisputed testimony that the Tenants were in rent arrears when the tenancy ended on August 31, 2011 and that the Tenants owe the Landlord a total of \$2,450.00 for rent for the months of June, July, and August 2011. I find that the Landlord has established a monetary claim of **\$2, 450.00**.

The tenancy agreement states that the Tenants are required to pay the phone bills for the rental unit. The Landlord's evidence supports that the Tenants had exclusive use of the phone at the rental unit and that they had agreed to this term in the tenancy agreement, as it is signed by the Tenants on the copy of the tenancy agreement provided into evidence. The Landlord has provided evidence of the outstanding amount of the phone bill to the end of the tenancy. I accept the Landlord's evidence and undisputed testimony that the Tenants failed to pay \$389.00 in phone bills. I find that the Landlord has established a monetary claim of **\$389.00**.

With regards to the Landlord's damages claim, section 67 of the Act states:

Without limiting the general authority in section 62(3) [*director's authority*], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

I find that the Landlord suffered a loss pursuant to section 67 of the Act for the following reasons:

In a claim for damage or loss under the Regulation the Applicant (in this case the Landlord) has the burden of proof to establish his claim on the civil standard, the balance of probabilities.

To prove a loss and have the Respondent (in this case the Tenants) pay for the loss the Applicant (the Landlord) must satisfy four different elements:

1. Proof that the damage or loss exists,
2. Proof that the damage or loss occurred due to the actions or neglect of the Respondent (Tenants) in violation of the Act or agreement,
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage, and
4. Proof that the Applicant (the Landlord) followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

As part of the evidence submissions which I considered, the Landlord provided photographs of condition of the rental unit, receipts for the actual costs, and verbal testimony about the condition of the rental unit and work performed. I find that the Landlord attempted to mitigate or minimize their losses by undertaking work on the rental unit within a reasonable period of time after the tenancy ended.

As a result, I find that the Landlord is entitled to **\$1,820.00** for cleaning, painting and repair costs, which is supported by a receipt for this amount.

I find that the Landlord is not able to claim the registered mail costs (\$20.94) or the photo costs (\$27.00) associated with their claim against the Tenants as the Act does not allow parties to recover the costs that are outside of our jurisdiction. Costs connected with serving documents or preparing the Application are outside the jurisdiction of the Act. As a result I dismiss these portions of the Landlord's claim totalling \$47.94.

Section 72 of the Act specifies that the filing fee can be awarded as determined by the Dispute Resolution Officer. As the Landlord has mostly succeeded in their Application, I find that the Landlord is entitled to recover the \$50.00 fee for this proceeding. I grant the Landlord a monetary order for \$4,709.00, which represents the unpaid rent, the rental unit cleaning, painting and repairs, the telephone bills, and the filing fee.

The Landlord filed their Application for dispute resolution on December 06, 2011. The Tenants did not file an application for return of their security deposit or pet damage deposit and I find that the Tenants did not provide the forwarding address to the Landlord in writing as required by the Act. I find that the Landlord did perform an move in inspection with the Tenants based on the undisputed testimony and I find that the Tenants abandoned the rental unit on August 31, 2011 as a result the Landlord was unable to perform a move out inspection with the Tenants. I find that the Tenants extinguished their right to the security deposit and pet damage deposit pursuant to section 36 of the Act.

The parties confirmed that the Landlord holds a \$500.00 security deposit and \$500.00 pet deposit. As I have found that the Tenants owe the Landlord \$4,709.00 and that they have extinguished their right to the security deposit and pet damage deposit, I order that the Landlord retain the deposits totalling \$1,000.00 in partial satisfaction of the claim. I grant the Landlord a monetary order pursuant to section 67 for the balance of the amount owing to the Landlord is **\$3,709.00**.

Conclusion

I grant the Landlord's claim in part for unpaid rent or utilities, damage to the unit site or property, compensation for damage and loss and the filing fee, however, the Landlord's claim for registered mail costs, and photo costs are dismissed.

I find that the Landlord is entitled to \$4,709.00, as I have ordered that the Landlord retain the security deposit and pet damage deposit totaling \$1,000.00, I find that the Landlord is entitled to monetary order for the balance owing pursuant to section 67 against the Tenants in the amount of **\$3,709.00**. This order must be served on the Tenants and may be filed in the Provincial Court (Small Claims).

The order accompanies the Landlord's copy of this decision.

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: March 12, 2012.

Residential Tenancy Branch