



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNR, MNSD, MNDC, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord for a monetary order for compensation for loss under the Act, unpaid rent, damages to the unit, and an order to retain the security deposit in partial satisfaction of the claim.

Although served with the Application for Dispute Resolution and Notice of Hearing on March 1, 2012, in person, the tenant did not appear.

Issue(s) to be Decided

Is the landlord entitled to a monetary order for compensation for loss under the Act?

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

Is the landlord entitled to a monetary order for damage to the unit?

Is the landlord entitled to keep all or part of the security deposit paid?

Background and Evidence

The tenancy began on July 1, 2011. Rent in the amount of \$1,750.00 was payable on the first of each month. A security deposit of \$875.00 was paid by the tenant.

The landlord's agent testified that on January 9, 2012, a Dispute Resolution Officer granted him a monetary order for December 2011, unpaid rent and an order of possession.

The landlord's agent testified the tenant was served with the order of possession, however, the tenant did not vacate the rent unit as required. The landlord's agent stated they were required to apply to the Supreme Court for a writ of possession. The landlord is seeking compensation for the cost of the writ of possession in the amount of **\$120.00**. Filed in evidence is a copy of payment for court fees.

The landlord's agent testified on January 20, 2012, the bailiffs executed the writ of possession. The landlord's agent is seeking compensation for bailiff fees in the amount of **\$2,128.67**. Filed in evidence is a copy of the bailiff's invoice.

The landlord's agent testified the tenant had possession of the rental unit for the month of January, 2012, and did not pay rent. The landlord is seeking rent for January 2012, in the amount of \$1,750.00.

The landlord's agent testified that the rental unit was freshly painted at the start of the tenancy and when they took possession of the rental unit on January 20, 2012, there was significant damage to the walls. The landlord's agent stated there were various kinds of holes in the drywall, he is not exactly sure what caused the holes, but some appeared that they may have been from the base of a baseball bat, and some appeared to have been from a knife being thrown at the wall. The landlord is seeking compensation for the cost paid to have the drywall patched, repaired and the walls painted in the amount of \$1,410.30. Filed in evidence is a copy of the invoice for repairs to the rental unit walls.

The landlord's agent testified that the tenant made no effort during tenancy to keep the carpets clean. The carpets were filthy, and there were dirt tracks from muddy shoes. The landlord is seeking compensation for carpet cleaning in the amount of \$196.00. Filed in evidence is a copy of invoice for carpet cleaning.

The landlord's agent testified that the rental unit was required to be cleaned after the bailiffs removed the tenant's belongings. They had to clean the fridge, stove and the entire unit. The landlord is seeking compensation for the cost paid for cleaning in the amount of \$312.00. Filed in evidence is a copy of an invoice for cleaning the rental unit.

Analysis

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

Rules about payment and non-payment of rent

26 (1) A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

In this case, the tenant was in the rental unit during the month of January, 2012, rent is due on the first of each month under the tenancy agreement. The tenant did not have a right under the Act to deduct any rent. Therefore, I grant the landlord compensation for January 2012, rent in the amount of **\$1,750.00**.

In a claim for damage or loss under the Act or tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard.

To prove a loss and have one party pay for the loss requires the other party to prove 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 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 followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

In this case, the landlord has the burden of proof to prove a violation of the Act and a corresponding loss.

The evidence of the landlord's agent was the tenant did not comply with the order of possession issued by a Dispute Resolution Officer on January 9, 2012, and as a result were required to obtain a writ of possession in the Supreme Court. I find the landlord did suffer a loss due to the actions of the tenant violating the Act. Therefore, I grant the landlord compensation for the cost of obtaining a writ of possession in the amount of **\$120.00**.

The evidence of the landlord's agent was the tenant did not comply with an order of possession and on January 20, 2012, the bailiffs executed the writ of possession. I find that the landlord did suffer a loss due to the actions of the tenant violating the Act. Therefore, I grant the landlord compensation for bailiff fees in the amount of **\$2,128.67**.

The evidence of the landlord's agent was the rental unit was freshly painted at the start of the tenancy. The evidence was that the tenant deliberately damaged the drywall by putting various types of holes in the walls. The evidence was the drywall was patched, repaired and painted.

The policy guideline states the tenant is responsible for all deliberate or negligent damage to the walls. I find the landlord did suffer a loss due to the action or neglect of the tenant. Therefore, I grant the landlord compensation for repairing and painting the walls in the amount of **\$1,410.30**.

The evidence of the landlord's agent was the carpets in the rental unit were filthy and the tenant appeared to make no attempt to keep the carpet clean as they were covered with mud.

The policy guideline states the tenant is responsible for periodic cleaning of the carpets to maintain reasonable standards of cleanliness. Where the tenant has deliberately or careless stained carpets the tenant will be held responsible for cleaning the carpets at the end of tenancy. I find the landlord did suffer a loss due to the action or neglect of the tenant. Therefore, I grant the landlord compensation for carpet cleaning in the amount of **\$196.00**.

The evidence of the landlord's agent was after the bailiffs removed the tenant's belongings the rental unit required to be cleaned. This included the stove, fridge and the entire unit.

The policy guideline states the tenant at the end of the tenancy must clean the stove top, elements and oven, defrost and clean the refrigerator. The tenant is generally responsible for paying cleaning costs where the property is left at the end of the tenancy in a condition that does not comply with reasonable health, cleanliness and sanitary standards. I find the landlord did suffer a loss due to the actions or neglect of the tenant. Therefore, I grant the landlord compensation for cleaning the rental unit in the amount of **\$312.00**.

In the landlord's application they are seeking to recover a \$50.00 filing fee they incurred by the direct request process on January 9, 2012, this fee is not a fee that is recoverable under the Act. Therefore, I dismiss the landlord claim to recover the filing fee paid for the direct request process.

The landlord has established a monetary order in the amount of **\$6,016.97** comprised of unpaid rent for January 2012, compensation for loss, damages and the \$100.00 paid to file the application.

I order that the landlord retain the security deposit of **\$875.00** in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of **\$5,141.97**.

This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

Conclusion

The landlord is granted a monetary order for the balance due.

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: April 26, 2012.

Residential Tenancy Branch