



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MNSD, MNDC, 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 and for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement 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 9:44 a.m. in order to enable them to connect with this teleconference hearing scheduled for 9:30 a.m. The landlord attended the hearing and was given a full opportunity to be heard, to present evidence and to make submissions. The landlord's representative who attended this hearing (the landlord) testified that the landlord received the tenants' notice to end this tenancy by July 1, 2012 by way of the tenants' June 19, 2012 email. Although this is not an approved mechanism to provide written notice of the tenants' early end to this tenancy, the landlord's testimony convinced me that the landlord did receive the tenants' notice.

The landlord testified that the landlord sent both tenants copies of the landlord's dispute resolution hearing package by registered mail on August 10, 2012. She provided the Canada Post Tracking Number to confirm these mailings. I am satisfied that the landlord served the tenants with the dispute resolution hearing package in accordance with the *Act*.

Issues(s) to be Decided

Is the landlord entitled to a monetary award for unpaid rent and losses arising out of this tenancy? Is the landlord entitled to a monetary award for damage arising out of this tenancy? 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 one-year fixed term tenancy commenced on October 1, 2011. Monthly rent was set at \$1,470.00, payable in advance on the first, plus \$100.00 per month for parking. The landlord continues to hold the tenants' \$735.00 security deposit paid on September 13, 2011.

The landlord entered into written evidence a copy of the September 21, 2011 joint move-in condition inspection report and the June 28, 2012 joint move-out condition inspection report. The tenants vacated the rental unit on June 30, 2012.

The landlord entered into written evidence a copy of a \$67.20 invoice for cleaning conducted on this rental unit on July 4, 2012. The landlord also entered into written evidence a copy of a Security Deposit Report. In this report, the landlord outlined a list of deductions totalling \$6,706.80 which led to a \$5,971.20 amount identified as owing, after the value of the tenants' \$735.00 security deposit was deducted. Although there are signatures connoting the tenants' agreement with these deductions, one of the tenants also wrote beside the net amount owing that "I would agreed to pay July 1-19 because it is rented after that. My deposit should cover small repairs." By that time, the tenants were apparently aware that the landlord had been successful in re-renting the rental unit as of July 20, 2012 to new tenants.

The landlord's application for a monetary award of \$5,892.50 included the following items:

Item	Amount
Unpaid Rent from July 1-19, 2012	\$901.00
Payment for Broken Agreement (3 months of remaining portion of Fixed Term Tenancy Agreement 3 months @ \$1,470.00 = \$4,410.00)	4,410.00
Late Notice	735.00
Cleaning	60.00
Painting Materials	115.80
Taxes	70.70
Recovery of Filing Fee for this application	50.00
Total of Above Items	\$6,342.50

Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, a Dispute Resolution Officer may determine the amount of that damage or loss and order

that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. In this case, the onus is on the landlord to prove on the balance of probabilities that the tenant caused the damage and that it was beyond reasonable wear and tear that could be expected for a rental unit of this age.

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. I find that the tenants were in breach of their fixed term tenancy agreement because they vacated the rental premises prior to the September 30, 2012 date specified in that agreement. As such, the landlord is entitled to compensation for losses incurred as a result of the tenants' failure to comply with the terms of their tenancy agreement and the *Act*.

There is undisputed evidence that the tenants did not pay any rent for their fixed term tenancy after June 1, 2012. However, 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 as soon as possible. The landlord entered into written evidence a copy of the residential tenancy agreement signed on June 26, 2012 with a new tenant who agreed to commence his tenancy on July 20, 2012 for a fixed term to expire on January 31, 2013. The agreed monthly rent for the new tenant was \$1,470.00, the same base level rent as that established in the tenancy under dispute. As such, 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 tenants did not fulfill their obligations to continue their tenancy until September 30, 2012. The tenants' late notification of their intention to end their tenancy by July 1, 2012 led to the landlord's demonstrated loss of rent for the first 19 days of July 2012. I find that the landlord is entitled to a monetary award for the pro-rated amount of rent owing from July 1 to July 19, 2012. This results in a monetary award of \$931.00 (i.e., $(\$1,470.00 \times 19/30) = \931.00).

I find that the landlord has not demonstrated losses for the remainder of the scheduled fixed term tenancy. The landlord's success in finding a new tenant who took possession on July 20, 2012 mitigated the tenants' exposure to losses for the remaining portion of their fixed term tenancy. In accordance with section 7(2) of the *Act*, I find that the landlords are not entitled to any further monetary award for loss of rent or for the tenants' late notice of their intention to end their fixed term tenancy early. I find that the tenants only agreed to the landlord's recovery of rent for the first 19 days of July 2012. Furthermore, even if the confusing Security Deposit Report were to be interpreted as the tenants' written agreement to allow the landlord to recover the remaining three month's rent for this fixed term tenancy, I find that the provisions of the *Act* take precedence over any written agreement entered into by the parties that contravenes that *Act*. I make this determination in accordance with section 5 of the *Act* which establishes that landlords and tenants may not contract out of this *Act*. For these reasons, I dismiss the landlord's application for a monetary award for any further award for the recovery of loss of rent or for late notice by the tenants of their intention to end this tenancy without leave to reapply.

Turning to the landlord's claim for damage arising out of this tenancy, I note that the copy of the joint move-out condition inspection report entered into written evidence by the landlord contains inconsistencies. The joint move-out report signed by the tenant contains photocopied entries for both the move-in conditions and the move-out conditions **and** signature. All significant entries in the move-out section of this report were written in ink on the copy of the move-out report entered into written evidence by the landlord. Since the tenant's signature is not also written in ink, I have questions as to whether these additional notations in which the landlord has requested repairs and cleaning were actually attested to by the tenant during the joint move-out condition inspection.

In assessing the merits of the landlord's claim for damage arising out of this tenancy, I have considered the landlord's photographs, one receipt for cleaning, the move-in and move-out condition inspection reports and the Security Deposit Report, all entered into evidence by the landlord.

The landlord's photographs and the tenant's statement on the Security Deposit Report lead me to the finding that the tenants did not leave the rental unit in reasonably clean and undamaged condition as required by section 37(2) of the *Act*. Based on a balance of probabilities, I accept the landlord's claim that some cleaning was necessary at the end of this tenancy. I allow the landlord a monetary award of \$67.20, the amount identified in the invoice submitted by the landlord for four hours of cleaning. Although the landlord did not provide any further receipts to support the application for a

monetary award for damage to the rental unit, I allow the landlord a nominal monetary award of \$75.00 to reflect that the tenant has acknowledged that there was some damage caused during this tenancy. I dismiss the landlord's application for a recovery of taxes, as the only amount of taxes to which the landlord is entitled is the tax incorporated into my finding regarding cleaning of the rental unit.

I allow the landlord to retain the tenants' security deposit in partial satisfaction of the monetary award issued in this decision plus applicable interest. No interest is payable over this period. I allow the landlord to recover \$50.00 of the landlord's filing fee from the tenants, as the landlord was only partially successful in this application.

Conclusion

I issue a monetary Order in the landlord's favour under the following terms which allows the landlord to recover unpaid rent, damage arising out of this tenancy and part of the filing fee for this application and to retain the tenants' security deposit:

Item	Amount
Unpaid Rent from July 1-19, 2012	\$931.00
Cleaning	67.20
Damage Arising from Tenancy	75.00
Less Security Deposit	-735.00
Recovery of Partial Filing Fee	50.00
Total Monetary Order	\$388.20

The landlord is provided with these Orders in the above terms and the tenant(s) 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.

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: November 01, 2012

Residential Tenancy Branch

