



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MND, MNSD, OPR, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord for an order of possession, a monetary order for unpaid rent and damages 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 by registered mail on November 29, 2012, a Canada post tracking number was provided as evidence, the tenant did not appear.

Section 90 of the Act determines that a document served in this manner is deemed to have been served three days later. I find that the tenant has been duly served in accordance with the Act.

Preliminary Issue

At the onset of the hearing the landlord stated the tenant vacated the rental unit on December 15, 2012, and an order of possession is no longer required.

Issue(s) to be Decided

Is the landlord entitled to a monetary order for unpaid rent and for damages to the unit?
Is the landlord entitled to retain the security deposit in partial satisfaction of the claim?

Background and Evidence

The tenancy began on July 24, 2012. Rent in the amount of \$600.00 was payable on the first of each month. A security deposit of \$300.00 was paid by the tenant. Filed in evidence is a copy of the tenancy agreement.

The landlord testified the tenant vacated the rental unit on December 15, 2012, without paying rent for December 2012. The landlord seeks to recover \$600.00 in unpaid rent.

The landlord testified the police were called twice to the rental unit. The landlord stated the tenant cause damage to the property as there was a hole in the drywall, which appears to be from a fist punching the wall. The landlord stated there were also numerous finger tip size depression in the drywall and chipping of the paint, this appeared to be from something being knocked into the wall. The landlord stated the

smoke detector was smashed and when the tenant vacated the unit the tenant failed to return the keys and the locks had to be changed. The landlord stated he paid \$500.00 to repair the damage to the rental unit.

Analysis

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

To prove a loss and have one party pay for the loss requires the claiming party to prove four different elements:

- Proof that the damage or loss exists;
- Proof that the damage or loss occurred due to the actions or neglect of the Respondent in violation of the Act or agreement;
- Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
- 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 by the tenant and a corresponding loss.

Section 26 of the Residential Tenancy Act states:

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 tenancy agreement requires the tenant to pay rent on the first of each month; the tenant did not pay rent and vacated the unit on December 15, 2012. I find the tenant breach section 26 of the Act, when they failed to pay rent on December 1, 2012 as required by the tenancy agreement. The evidence of the landlord was no rent was paid. Therefore, I find the landlord is entitled to recover unpaid rent for December 2012, in the amount of **\$600.00**.

Section 37 of the Residential Tenancy Act states:

*37 (2) When a tenant vacates a rental unit, the tenant must
(a) leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.*

The undisputed testimony of the landlord was the tenant caused damage to the unit by punching a hole in the drywall damaging the wall, the evidence was further damage was caused to the wall from something being knocked into the wall causing finger tip size

depression and chipping of the paint. The evidence was the smoke detector was smashed and the keys were not returned.

In this case the damage was not reasonable wear and tear, I find the tenant breach the Act, by failing to leave the rental unit undamaged. The landlord stated it cost \$500.00 to repair the damage. The landlord has not submitted a receipt, however, I find the amount claimed reasonable. Therefore, I granted compensation to the landlord for damages in the amount of **\$500.00**.

I find the landlord has established a total monetary claim of **\$1,150.00** comprised of the above amounts and the \$50.00 fee paid by the landlord for this application.

I order that the landlord retain the deposit and interest of **\$300.00** in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of **\$850.00**.

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 and may keep the security deposit in partial satisfaction of the claim. I grant an formal 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: January 04, 2013.

Residential Tenancy Branch

