



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNDC, MNR, MNSD, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord for a monetary order for unpaid rent, for compensation under the Act and the tenancy agreement, for cleaning and repairs after the Tenant vacated, for an order to retain the security deposit and pet damage deposit in partial satisfaction of the claim, and to recover the filing fee for the Application.

Only the Agents for the Landlord appeared at the hearing. They gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions to me.

The Landlord submitted a registered mail receipt and tracking information for registered mail sent to the Tenant. This evidence shows the Landlord served the Tenant by sending registered mail to the forwarding address provided by the Tenant on January 14, 2013. Tracking information supplied by the Landlord indicates the Tenant accepted the mail on January 15, 2013. I find the Tenant has been duly served in accordance with the Act.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

Are the Landlords entitled to monetary compensation from the Tenant?

Background and Evidence

The parties signed a written tenancy agreement on November 16, 2012. The tenancy began on December 1, 2012, and was to last for one year, until November 30, 2013. The monthly rent was set at \$1,140.00, payable on the first day of the month. The

Tenant paid the Landlord a security deposit of \$570.00 and a pet damage deposit of \$570.00 on November 16, 2012.

The tenancy agreement required the Tenant to pay liquidated damages of \$200.00 if the Tenant breached the tenancy agreement during the initial one year, fixed term.

On December 25, 2012, the Tenant left the Agents for the Landlord a note indicating he was leaving the rental unit because he lost his job and could not pay the rent. He instructs the Landlord to keep the security deposit for cleaning, but requests the pet damage deposit be returned and provides a forwarding address in writing for that purpose.

The Landlord is claiming it has incurred substantial costs to clean and repair the rental unit due to the condition it was left in by the Tenant. The Landlord is also claiming for losses due to the breach of the fixed term tenancy agreement.

The Landlord claims as follows:

a.	Loss of rent for January 2013	1,140.00
b.	Cleaning and re-painting	600.00
c.	Repair and painting of closet doors	200.00
d.	New closet doors	117.84
e.	Patio door pull plate	2.99
f.	Liquidated damages	200.00
g.	Filing fee	50.00
	Total claimed	\$2,310.83

The Agents for the Landlord testified that the rental unit was re-rented for February 2013, and the Landlord requests one month of lost rent in the amount of \$1,140.00

The Landlord is claiming \$200.00 to clean the bathtub, tiles, floors, patio, stove, refrigerator, toilet, windows and carpeting. The Agents for the Landlord testified that the Tenant put a lot of holes in the walls and re-painted a portion of the rental unit with a non-standard colour. The Tenant was to re-paint the walls to return them to the original colour prior to vacating, and the Agents for the Landlord testified he failed to do this. The Landlord claims \$400.00 for this, for a total of \$600.00, and has provided an invoice in support of this amount.

The Landlord alleges the Tenant chipped the front lamination off some closet doors in the rental unit. The Landlord had to install new closet doors and repaint these to match the colour of the room. The Landlord has provided an invoice for \$200.00 for the labour and painting to change the doors; however, there was no invoice for the doors themselves in evidence.

The Landlord sent in a picture indicating the patio door handle has been melted. The Landlord claims \$2.99 for replacement, but there is no invoice in evidence to support this.

Analysis

Based on the uncontradicted evidence and testimony, and on a balance of probabilities, I find as follows.

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 sections 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.

In this instance, the burden of proof is on the Landlord to prove the existence of the damage/loss and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the Tenant. Once that has been established, the Landlord must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the Landlord did everything possible to minimize the damage or losses that were incurred.

Based on the written evidence of the Landlord, and the testimony of the Agents, I find the Tenant has breached section 45 of the *Act* and the tenancy agreement by breaching a fixed term tenancy without proper authority to do so.

Under section 45(2) of the Act, the Tenant was not allowed to end a fixed term tenancy, without an order from an Arbitrator to end the tenancy, or without other authority under the Act to end it. The Tenant might have used section 45(3) of the Act, which required him to give the Landlord a written notice of the alleged breach of a material term of the tenancy, and a reasonable amount of time to address the alleged breach of the material term of the tenancy. If the Landlord had not corrected the alleged material breach within the reasonable amount of time, then the Tenant may have given the Landlord notice he was ending the tenancy. In this instance, there is no evidence the Landlord had breached any term of the tenancy agreement or that the Tenant alleged this. I allow the Landlord one month of lost rent and the liquidated damages.

I also find the Tenant failed to clean the rental unit or make repairs to it, as required under the Act in section 37, and this has caused losses to the Landlord. I allow the Landlord \$600.00 for this, as well as the \$200.00 for the closet doors.

I do not allow the Landlord \$117.84 or \$2.99 as claimed, as there are no invoices in evidence for these amounts. I find the Landlord failed to verify these amounts by not providing invoices and these claims are dismissed without leave to reapply.

Section 67 of the Residential Tenancy 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 has established a total monetary claim of **\$2,190.00** comprised of \$1,140.00 for lost rent, \$600.00 for cleaning and re-painting, \$200.00 for the closet doors, \$200.00 for liquidated damages, and the \$50.00 fee paid for this application.

I order that the Landlord may retain both the deposits of **\$1,140.00** in partial satisfaction of the claim and I grant the Landlord an order under section 67 for the balance due of **\$1,050.00**.

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

Conclusion

The Tenant breached the Act and tenancy agreement by ending a fixed term tenancy without authority to do so, and failed to clean and make repairs to the rental unit before he vacated. The Landlord has proven losses, and may keep the security deposit and pet damage deposit in partial satisfaction of the claims, and is granted a monetary order for the remaining balance due.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: February 04, 2013

Residential Tenancy Branch

