



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MNDC, MNSR, FF

Introduction

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

Only one of the Landlords 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 testified that the Tenants did not provide her with a forwarding address when they vacated the property. The Landlord then used an address for service which she found on a cheque that the Tenants had issued to the Landlords. The Landlords served each of the Tenants with the Notice of Hearing and Application by registered mail, sent on November 28, 2012. This initial registered mail that was sent to the Tenants was returned to the Landlords marked "refused". Subsequent registered mail containing the evidence was not accepted by the Tenants. I note that refusal or neglect to accept registered mail is not a ground for Review under the Act. I find the Tenants are trying to avoid service and have been sufficiently served for the purposes of 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 Tenants?

Background and Evidence

The parties entered into a standard form tenancy agreement on March 15, 2012. The tenancy had an initial term of one year, to run to March 31, 2013. The monthly rent was set at \$950.00, payable on the first day of each month. The Tenants paid the Landlords a security deposit of \$475.00 on March 5, 2012.

The Landlord testified that there were some noise and other complaints about the Tenants made by other occupants at the residential building where the subject rental unit is located.

The Landlords discussed these with the Tenants. The Tenants informed the Landlords they would be vacating the rental unit on July 15, 2012.

After this, the rent cheque for July 2012 was not honoured by the Tenants' bank due to insufficient funds.

According to the testimony of the Landlord, once the Tenants were informed of the NSF cheque, one of the Tenants began making allegations of a serious nature against another occupant of the building.

The Landlord testified that she has since contacted the local police who informed her there was no record of criminal complaints being made regarding the other occupants or property.

The Landlord testified that the Tenants vacated the property without attending the outgoing condition inspection.

The Landlords are claiming they have incurred substantial costs to clean and repair the rental unit due to the condition it was left in by the Tenants.

The Landlords claim as follows:

a.	Loss of rent for July 2012	\$950.00
b.	Removal of furniture and refuse left by Tenants, and dump fees	\$150.00
c.	Lock changes	\$50.00
d.	Cleaning by Landlords 9 hours @ \$25.00	\$225.00
e.	Touch up paint for writing on walls	\$35.00
f.	Repair to damaged bi-fold door	\$50.00
g.	Replace broken smoke alarm	\$17.00
h.	Advertising for rental unit	\$12.00
	Filing fee	50.00
	Total claimed	\$1,539.00

In support of the above claims the Landlords have supplied registered mail receipts, a copy of the cheque returned NSF, a warning letter to the Tenants dated May 8, 2012, the tenancy agreement, print outs of text messages and photographs of the rental unit.

Analysis

Based on the uncontradicted testimony and evidence, 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 Landlords 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 Tenants. Once that has been established, the Landlords must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the Landlords did everything possible to minimize the damage or losses that were incurred.

Under section 45 of the *Act*, the Tenants were unable to unilaterally end this fixed term tenancy. However, the Landlords agreed that the Tenants could end the tenancy and vacate the rental unit.

Under section 26 of the *Act*, the Tenants were required to pay rent to the Landlords. The Landlords have provided a copy of the dishonoured cheque given to them by the Tenants for July rent. I find that the Landlords have proven that the Tenants failed to pay the required rent for July of 2012.

I accept the testimony of the Landlord that they had significant cleaning to perform at the rental unit, as it was detailed and specific. I also accept the testimony and photographic evidence regarding the marks on the walls of the rental unit which required touch up painting. This leads me to find the Tenants breached section 37 of the *Act* by failing to clean the rental unit to a reasonable standard and they did not make repairs to the rental unit.

I also find the Landlords acted in a reasonable manner to mitigate their losses, by performing the cleanup work and paint touch ups themselves.

However, I find the Landlords failed to provide sufficient evidence, such as invoices or receipts, for the dump fees, lock changes, repair of the bi-fold door, the smoke alarm, or for advertising the rental unit. Accordingly, I dismiss these claims without leave.

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 Landlords have established a total monetary claim of **\$1,260.00** comprised of rent, cleaning, painting and the \$50.00 fee paid for this application.

I order that the Landlords retain the deposit of **\$475.00** in partial satisfaction of the claim and I grant the Landlords an order under section 67 for the balance due of **\$785.00**.

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

Conclusion

The Tenants breached a fixed term tenancy, did not pay rent due to the Landlords, and did not perform sufficient cleaning or repairs when they left the rental unit. The Landlords are granted a monetary order, may keep the security deposit in partial satisfaction of the claim, and are issued a monetary order for the balance payable by the Tenants.

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: March 01, 2013

Residential Tenancy Branch

