



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlords for a monetary order for unpaid rent, for damages to the unit, to keep all or part of the pet damage deposit or security deposit and to recover the cost of filing the application from the tenants.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing.

Preliminary Issue

In this case, the landlords have indicated several matters of dispute on the application for dispute resolution. One of the items listed is to keep all or part of the pet damage deposit or security deposit. However, on October 12, 2012, the parties attended a dispute resolution hearing and the issue of the deposits were heard and a decision was made awarding the tenants double the security deposit.

I find that due to section 77(3) of the Act and the legal principal of Res judicata, I cannot grant the landlords' request to hear the issue of the deposits as this matter was already heard and decided was made.

The balance of the landlords' application proceeded at today's hearing.

Issue(s) to be Decided

Are the landlords entitled to a monetary order for unpaid rent?

Are the landlords entitled to a monetary order for damages to the unit?

Are the landlords entitled to recover the cost of filing the application?

Background and Evidence

The tenancy began on July, 1, 2011. Current rent in the amount of \$1,250.00 was payable on the first of each month. A security deposit of \$675.00 and a pet damage deposit of \$500.00 were paid by the tenants. The tenancy ended on or about July 7, 2012. The parties agreed no move-in and no move-out inspection reports were completed in accordance with the Act.

The landlords' claims as follows:

a.	Unpaid rent for June	\$ 1,250.00
b.	Broken window	\$ 350.00
c.	Clean house	\$ 500.00
d.	Shampoo carpet	\$ 150.00
e.	Boarding fee for horses	\$ 450.00
g.	Filing fee	\$ 50.00
	Total claimed	\$2,700.00

Unpaid rent for June

The tenants agreed rent they owe \$1,250.00 for unpaid rent for June 2012

Broken windows

The landlord testified there were two broken windows, one was broken in the garage and the other broken window was on first floor in the rental unit.

The tenant testified that she agreed that these two windows were broken, however, the tenant stated that these windows were broken when they took possession of the unit.

Clean house

The landlord testified that the tenant left the house and garage dirty and they were required to remove a large amount of garbage. The landlord stated they spent at least 5 hours cleaning the garbage and cutting the grass.

The tenant testified the house was left clean and they were not given an opportunity to remove the garbage from the garage or to cut the grass, as the landlord took their keys back on July 5, 2012, and they still had until July 7, 2012, to vacate the unit.

The landlord disputes the tenants claim.

Shampoo carpet

The landlord testified the tenants did not clean the carpets, the landlord stated they cleaned the carpet with their own machine and supplies.

The tenant testified they did not clean the carpets at the end of tenancy and disputes they were cleaned by the landlord because they believe the carpets were being replaced.

Analysis

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

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 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.

Where the claiming party has not met each of the four elements, the burden of proof has not been met and the claim fails. In this case, the landlords have the burden of proof to prove.

Unpaid rent for June

The evidence of the tenant was rent was not paid for June 2012. Therefore, I find the landlord is entitled to recover unpaid rent in the amount of **\$1,250.00**.

Broken windows

In this case, both parties agreed two windows were broken, however, the tenant evidence was that these two windows were broken when they took possession of the

unit. I find without further evidence from the landlord, such as a move-in inspection report, the landlords have failed to prove the damage was caused by the tenants. Therefore, I find the landlords' claim for the broken windows must be dismissed.

Clean house

In this case, the parties did not participate in a move-out inspection as required by the Act. The evidence of the landlord was the house was left dirty, however, the landlord has not provided any photographs to support their claim. The tenant disputes the house was left unclean. Therefore, I find the landlords have provided insufficient evidence to support their claim that the house was left unclean at the end of tenancy. I dismiss this portion of the landlords' claim.

The parties agreed the grass cutting was the tenants' responsibility. The parties further agreed the grass was not cut at the end of tenancy. The evidence of the landlord was that there was also a large amount of garbage which they had to remove. The evidence of the tenant was they were not given the opportunity to cut the grass or remove the garbage as the landlord took the keys two days earlier than expected. This was denied by the landlord.

In this case, the tenants have provided no evidence to support their claim that they were denied access to the property prior to the tenancy ending. Further, the photographs submitted by the landlords support their claim that the grass required cutting and that there was a large amount of garbage left in the garage. As a result, I find the tenants breached the Act, when they failed to cut the grass and remove the garbage at the end of tenancy.

As I have found the tenants breached the Act when they failed cut the grass and remove the garbage. I find landlords are entitled to compensation for work they performed to remove the garbage and cut the grass. The landlords claimed it took them 5 hours to remove the garbage and cut the grass, which I find is reasonable based on the photographs submitted. Therefore, I grant the landlords a nominal amount for garbage removal and grass cutting, pursuant to section 67 of the Act in the amount of **\$200.00.**

Shampoo carpet

The evidence of the landlord was the carpets were left dirty at the end of tenancy and they cleaned the carpets with their own carpet cleaning machine and supplies. The tenants acknowledge they did not clean the carpet, however, the tenants evidence was

they did not clean the carpets because they were being replaced and they dispute the landlord actually cleaned the carpets as alleged.

In this case, the tenants dispute the carpets were cleaned by the landlord. The landlords have not provided any documentary evidence to support their claim that they did clean the carpets, such as before and after photographs of the carpets. Therefore, I find the landlords have failed to prove this portion of their claim must be dismissed.

Boarding fee for horses

In this case, the landlord is claiming boarding fee for horses. I find there is no provision under the Act that gives me jurisdiction to hear claims relating to animal boarding fees. As a result, I decline to hear the matter of horse boarding fee for lack of jurisdiction.

I find that the landlords have established a total monetary claim of **\$1,500.00** comprised of the above described amounts and the \$50.00 fee paid for this application. I grant the landlords a formal order under section of the Act. This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

Conclusion

The landlords are granted a monetary order in the above amount.

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: February 14, 2013

Residential Tenancy Branch

