



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding MIDDLEGATE DEVELOPMENTS LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNR, MNSD, MND

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord for a monetary order for unpaid rent, for damages to the unit and an order to retain the security deposit in partial satisfaction of the claim.

The landlord's agent attended the hearing. As the tenants did not attend the hearing, service of the Application for Dispute Resolution and Notice of Hearing (the "Notices") were considered.

The Residential Tenancy Branch Rules of Procedure states that each respondent must be served with a copy of the Notices.

The landlord's agent testified that the Notices were sent by registered mail on December 20, 2012, Canada post tracking numbers were provided as evidence of service. The landlord's agent stated that the Canada post tracking history reports indicate the registered mail packages were picked-up by the tenants on December 28, 2012. The tenants did not appear.

I find that the tenants have been duly served in accordance with the Act.

The landlord's agent appeared gave testimony and was provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

Issues to be Decided

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

Background and Evidence

The tenancy began on March 1, 2012. Rent in the amount of \$1,087.00 was payable in advance on or before 1:00pm of the last day of each month. A security deposit of \$543.50 was paid by the tenants. The tenancy ended on December 11, 2012.

The landlord claims as follows:

a.	Unpaid rent for December and late fee	\$1,112.00
b.	Drape and suite cleaning	\$ 121.60
	Total claimed	\$1,233.60

The landlord's agent testified that on December 11, 2012, at the move-out inspection the parties agreed the tenants owed a total amount of \$1,233.60. This amount included unpaid rent for December 2012, a late rent fee as stated in the tenancy agreement, a drape cleaning fee and the cost of addition cleaning that was required to the rental unit. Filed in evidence is a copy of the agreement dated December 11, 2012, signed by the tenants.

The landlord's agent testified that the tenants also authorized them to retain the security deposit to offset the above amount owed. The landlord stated the tenants provided two cheques to cover the outstanding balance owed of \$690.10. However, the cheques were not cashable. The landlord seeks to recover the amount of \$1,233.60.

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 landlord has the burden of proof to prove their claim.

In this case, the tenants acknowledged they failed to pay rent for December 2012 and failed to pay the late fee as required by the tenancy agreement. I find the tenants have breached the tenancy agreement and the Act when they failed pay these amount when due and this has caused losses to the landlord. Therefore, I find the landlord is entitled to recover unpaid rent and the late fee for the month of December 2012, in the amount of **\$1,112.00**.

On December 11, 2012, the tenants agreed in writing that they were responsible for the cost of cleaning the drapes and the cost of cleaning of the rental unit, in the total amount of \$121.60. As a result of that written agreement, I find the landlord is entitled to recover the cost of cleaning the drapes and cleaning the rental unit, in the amount of **\$121.60**.

I find that the landlord has established a total monetary claim of **\$1,283.60** comprised of the above described amounts and the \$50.00 fee paid for this application.

I order that the landlord retain the deposit and interest of **\$543.50** in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of **\$740.10**.

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 and may keep the security deposit in partial satisfaction of the claim and the landlord is granted a 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: March 18, 2013

Residential Tenancy Branch

