



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MNSD, MNDC, FF

Introduction

This hearing dealt with the landlord's Application for Dispute Resolution seeking an order of possession and a monetary order.

The hearing was conducted via teleconference and was attended by the landlord's agent.

The landlord testified each tenant was served with the notice of hearing documents and this Application for Dispute Resolution, pursuant to Section 59(3) of the *Residential Tenancy Act (Act)* by registered mail on April 12, 2013 in accordance with Section 89. As per Section 90, the documents are deemed received by the tenants on the 5th day after it was mailed.

Based on the testimony of the landlord, I find that the tenants have been sufficiently served with the documents pursuant to the *Act*.

Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to a monetary order for unpaid rent; for cleaning of the rental unit; for all or part of the security deposit and to recover the filing fee from the tenants for the cost of the Application for Dispute Resolution, pursuant to Sections 37, 38, 44, 67, and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The landlord provided into evidence the following documents:

- A copy of a tenancy agreement signed by the parties on November 1, 2012 for a 1 year fixed term tenancy agreement beginning on November 1, 2012 with a monthly rent of \$1,000.00 due on the 1st of each month with a security deposit of \$500.00 paid;
- A copy of a handwritten note from the tenants dated March 1, 2013 stating the tenants intended to vacate the rental property by March 31, 2013.

The landlord submits that he secured new tenants for the rental unit effective May 1, 2013 but that the rent amount had to be reduced in order to do so. The new tenancy agreement lists the new rent at \$900.00. The landlord seeks compensation for unpaid rent for the month of April 2013 and for the difference between the rent in the tenancy agreement signed by these tenants and the current rent he is receiving for the remainder of the fixed term.

The landlord also seeks to recover the costs to clean the garage and bottom of stairs area; the wood floors; and the fridge. The landlord has submitted a receipt in the amount of \$100.00.

Analysis

To be successful in a claim for compensation for damage or loss the applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
3. The value of the damage or loss; **and**
4. Steps taken, if any, to mitigate the damage or loss.

Section 45(2) of the *Act* stipulates that a tenant may end a fixed term tenancy by giving the landlord a notice to end the tenancy effective on a date that is not earlier than one month after the date the landlord receives the notice; is not earlier than the date specified in the tenancy agreement as the end of the tenancy and is the day before the day in the month that rent is payable under the tenancy agreement.

Based on the undisputed testimony and evidence of the landlord I find the tenants violated Section 45(2) of the *Act* by attempting to end the tenancy on March 31, 2013 and find the tenants are therefore responsible for the payment of rent for the rental unit until the end of the fixed term (October 31, 2013) subject to the landlord's obligation to mitigate losses.

I accept the landlord has entered into a new tenancy agreement with new tenants effective May 1, 2013 in an amount that was \$100.00 per month less than the agreed upon amount in the tenancy agreement between these tenants and the landlord. I find that the tenants are therefore responsible for the payment of \$1,000.00 for rent for the month of April 2013 and a total of \$600.00 for top up of the rent amount for the period between May 2013 and October 2013.

Section 37 of the *Act* requires a tenant who is vacating a rental unit to leave the unit reasonably clean, and undamaged except for reasonable wear and tear, and give the landlord all keys or other means of access that are in the possession and control of the tenant and that allow access to and within the residential property.

I also accept based on the undisputed testimony and evidence of the landlord that the tenants failed to meet their obligations under Section 37 and as a result the landlord has suffered a financial loss of \$100.00 for cleaning, as shown by the landlord's receipt.

Conclusion

I find the landlord is entitled to monetary compensation pursuant to Section 67 in the amount of **\$1,750.00** comprised of \$1,600.00 rent owed; \$100.00 cleaning; and the \$50.00 fee paid by the landlord for this application.

I order the landlord may deduct the security deposit and interest held in the amount of \$500.00 in partial satisfaction of this claim. I grant a monetary order in the amount of **\$1,250.00**.

This order must be served on the tenants. If the tenants fail to comply with this order the landlord may file the order in the Provincial Court (Small Claims) and be enforced as an order of that Court.

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: July 03, 2013

Residential Tenancy Branch

