



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Code MNR, MNSD, FF

Introduction

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

The landlord attended the hearing. As the tenants did not attend the hearing, service of the Notice of Dispute Resolution Hearing was considered.

The Residential Tenancy Branch Rules of Procedure states that each respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing.

The landlord testified the Application for Dispute Resolution and Notice of Hearing were sent by registered mail on May 6, 2013, Canada post tracking numbers were provided as evidence of service. The landlord stated that the tenants contacted after they received the packages and were yelling at her and using derogatory language.

Under Section 90 of the Act determines that a document served by registered mail is deemed to have been served five days later. I find that the tenants have been duly served in accordance with the Act.

The landlord appeared gave affirmed 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 parties entered into a fixed term tenancy which began on July 1, 2012 and was to expire on July 1, 2013. Rent in the amount of \$1,100.00 was payable on the first of each month. A security deposit of \$550.00 was paid by the tenants. Filed in evidence is a copy of the tenancy agreement signed by the tenants.

The landlord claims as follows:

a.	Loss of rent for December 2012, January, February and half of March 2013	\$3,850.00
b.	Unpaid utilities	\$ 475.19
c.	Carpet cleaning	\$ 150.00
d.	Filing fee	\$ 50.00
	Total claimed	\$ 4,525.19

The landlord testified that the tenants' cheque for December 2012 was returned by the bank as item dishonored as the tenants had closed their account. The landlord stated the tenants were then served with a notice to end tenancy for non-payment of rent. The landlord stated the tenants vacated the rental unit in December 2012, without paying rent owed under the terms of the tenancy agreement. The landlord seeks to recover unpaid rent for December 2012, in the amount of \$1,100.00. Filed in evidence is a copy of the cheque dated 2012.12.01 and is stamped item dishonored.

The landlord testified that as soon as they served the tenants with the notice to end tenancy they advertised the rental unit on two local popular websites and posted advertisements in one of the local store.

The landlord testified that they had no response to the advertisements at first due to the time of year and that there was also lot of snow that winter. The landlord stated they were able to find new tenants and their tenancy commenced March 17, 2013 and they were able to recover a portion of March 2013, rent from the new tenants in the amount of \$550.00. The landlord seeks to recover loss of rent for January, February and half of March 2013, in \$2,750.00.

The landlord testified that due to the tenants breaching the fixed term agreement they were required to pay to heat the rental unit from December 7, 2012 to March 17, 2013. The landlord stated that they had to pay a total of \$475.19 in electricity and this is a cost that they would not have incurred had the fixed term agreement not been breached by the tenants. The landlord seeks to recover the cost of the utilities in the amount of \$475.19.

The landlord testified that the tenants left the carpets filthy and there were stains everywhere and that they had to pay have the carpets cleaned. The landlord stated the cleaning company had to come back a second time as the stains did not come out after

the first cleaning. The landlord seeks to recover the cost of cleaning the carpets in the amount of \$150.00.

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, that is, a balance of probabilities.

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.

Section 67 of the Act provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

Section 26 of the Residential Tenancy Act states:

26 (1) A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

The evidence of the landlord was the tenants did not pay rent owed for December 2012, and were evicted for non-payment of rent. I find the tenants have breached section 26 of the Act when they failed to pay rent when due under the tenancy agreement and this has caused losses to the landlord. Therefore, I find the landlord is entitled to recover unpaid rent for December 2012, in the **\$1,100.00**.

Section 45 of the Residential Tenancy Act states:

45 (2) A tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that

(a) is not earlier than one month after the date the landlord receives the notice,

(b) is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and

(c) is the day before the day in the month, or in the other period on which the tenancy is based,

The evidence of the landlord was that due to the tenants' failure to pay rent they were evicted from the rental unit prior to the expiry of the fixed term agreement and as result of their actions they breached the fixed term tenancy.

As I have found previously in this decision that the tenants have breached the section 26 of the Act, when they failed to pay rent and due to their action the tenancy ended. As result, I find the tenants have breached section 45 of the Act, as the earliest date they could have end the tenancy was July 1, 2013.

As a result of the tenants not complying with the terms of the tenancy agreement or the Act the landlord suffered a loss of rent for January, February and half of March 2013. The landlord is entitled to an amount sufficient to put the landlord in the same position as if the tenants had not breached the tenancy agreement or Act. This includes compensating the landlord for any loss incurred up to the earliest time that the tenants could have legally ended the tenancy.

However, under section 7 of the Act, the party who claims compensation for loss that results from the non-complying party must do whatever is reasonable to minimize the loss. The duty to minimize the loss begins when the party entitled to claim damages becomes aware that damages are occurring.

The evidence of the landlord was that they advertised the rental unit on two popular websites and in a local store, however, due to the time of the year and lots of snow they were unable to find a new tenant until March 17, 2013. I find the landlord made reasonable efforts to minimize the loss. Therefore, I find the landlord is entitled to recover the loss of rent in the amount of **\$2,750.00**.

The evidence of the landlord was that during the time period of December 7, 2012, to March 17, 2013, they were required to pay the cost of heating the rental unit and that this was a cost they would not have incurred if the tenants had not breached the tenancy agreement. The tenancy agreement filed in evidence supports the landlord position that the tenants were responsible to pay for the utilities during the fixed term agreement as these were not included in the rent. I find that due to the tenants' actions of breaching the Act, the landlord incurred additional cost of heating the unit and this

has caused losses to the landlord. Therefore, I find the landlord is entitled to recover the cost of the utilities in the amount of **\$475.19**.

Under section 37 of the Act, the tenants are required to return the rental unit to the landlord reasonably clean and undamaged, except for reasonable wear and tear. Normal wear and tear does not constitute damage. Normal wear and tear refers to the natural deterioration of an item due to reasonable use and the aging process. A tenant is responsible for damage they may cause by their actions or neglect including actions of their guests or pets.

The evidence of the landlord was that the tenants left the carpets filthy and covered with stains and that they paid \$150.00 to have the carpets cleaned. I find staining of the carpet is caused by neglect, rather than normal wear and tear. I find the tenants have breached the Act, when they failed to have the carpets cleaned and this has caused losses to the landlord. Therefore, I find the landlord is entitled to recover the cost of the cleaning the carpets in the amount of **\$150.00**.

I find that the landlord has established a total monetary claim of **\$4,525.19** comprised of the above described amounts and the \$50.00 fee paid for this application.

I order that the landlord retain the deposit of **\$550.00** in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of **\$3,975.19**.

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: July 16, 2013

Residential Tenancy Branch

