



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Code MNR, MND, MNSD, FF

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 attended the hearing. The tenant (BA) attended the hearing. As the tenant (RH) 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 that he has gone through considerable effort to locate the tenant (RH) since filing his application.

The landlord testified the Application for Dispute Resolution and Notice of Hearing were sent by registered mail. The landlord indicated the Canada post tracking history indicated that the registered mail was received by the tenant (RH) on September 10, 2013. I find that the tenant has been duly served in accordance with the Act.

Preliminary issue

At the outset of the hearing the advocate for the tenant indicated that the landlord and the tenant (BA) have reached a settlement, in which the tenant (BA) paid the landlord the sum of \$1,779.35 in full and final settlement against the tenant (BA).

The parties agreed this settlement did not release the tenant (RH) for and additional monetary compensation that the landlord may be entitled to as a result of the tenancy.

The parties further agreed the above settlement did not include the security deposit and any monetary award granted should be reduced by the security deposit which is held in trust by the landlord.

As a result, the hearing proceeded against the tenant (RH). Any monetary award issued to the landlord will be reduced by the amount paid by the co-tenant (BA) and the balance owed will be the responsibility of the co-tenant (RH).

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 November 1, 2012 and was to expire on October 31, 2013. Rent in the amount of \$1400.00 was payable on the first of each month. A security deposit of \$700.00 was paid by the tenants.

The parties agreed a move-in condition inspection report was not completed as required by the Act.

The landlord claims as follows:

a.	Unpaid rent for April and May and unpaid electricity	\$ 3,140.00
b.	Liquidated damages	\$ 700.00
c.	Power consumed but not paid for	\$ 1,206.51
d.	Cleaning the abandoned suite	\$ 160.00
e.	Replacement cost of damage carpet	\$ 695.00
f.	Failure to return key	\$ 5.00
g.	Labour at \$30.00 for removal of abandoned furniture and debris from house (landlord labour)	\$ 90.00
h.	Cost of disposal charges (amended)	\$ 40.79
i.	Fees for bailiff fees, photocopying	\$ 257.20
j.	Filing fee	\$ 100.00
	Total claimed	\$ 6,394.50

Unpaid rent for April and May and unpaid electricity

The landlord testified that he discovered that the tenants had abandoned the rental unit in early April 2013, without providing notice to end the tenancy and the rent cheque for April was dishonored. The landlord seeks to recover unpaid rent and utilities for April 2013, in the amount of \$1,570.00.

The landlord testified that the tenants failed to provide him with sufficient notice to end the tenancy and as a result he was able to mitigate loss of rent for May as it was highly unlikely to be able to rent on short notice and the property changed ownership in June. The landlord stated as a result of the tenants breaching the fixed term agreement he

seeks to recover loss rent for May. The landlord stated that he would have not been had to pay the cost of the utilities for May 2013, had the tenants not breached the fixed term agreement. The landlord seeks to recover loss rent and utilities in the amount of \$1,570.00.

Liquidated damages

The landlord testified that clause 5 of the tenancy agreement requires if the tenants end the fixed term tenancy before the end of the term that the tenants will pay to the landlord liquidated damages, which is a pre-estimate of the landlord's cost of re-renting the unit.

The landlord testified he did not attempt to re-rent the unit for May 2013, due to insufficient notice given by the tenants in April and the fact the rental accommodation was sold for June 2013.

The tenant did not dispute the tenancy agreement provides a liquidated damages clause, which was the cost of re-renting the unit.

Power consumed but not paid for

The landlord testified that tenancy agreements stated that the tenants are required to pay \$170.00 per month for power consumption. The landlord stated that it also stated this amount may vary.

The landlord testified that the monthly amount is an estimate to cover the power usage over the year, and that that is passed on to the tenants who have signed a one year lease with the expectation that they will pay for much less in the actual power used in the winter and much more in the summer.

The landlord testified that because the tenants breached the fixed term agreement he should be compensated for the actual amount used during the tenancy. The landlord seeks compensation in the amount of \$1,206.51.

The tenant testified there was never an agreement with the landlord to pay more than the \$170.00 per month as stated in the tenancy agreement or any conversation that they agreed to be responsible for any back usage of electricity.

Cleaning the abandoned suite

The landlord testified that the entire unit had to be cleaned, which included, cleaning the appliances, sweeping and washing the floor, removal of furniture and garbage. The landlord stated that he paid \$160.00 to have the unit cleaned.

The tenant (BA) testified that she cleaned the apartment prior to her leaving, however, as the tenant (RH) remained she did not clean the appliances. The tenant stated she did not see the condition of the unit when the co-tenant vacated.

Replacement cost of damage carpet

The landlord testified that the carpets were replaced in the summer of 2012 and when the tenancy ended there was a red wine stain in the carpet. The landlord stated he did not clean or replace the carpet, because when the house was sold they negotiated a lower sale price.

The tenant testified that she does not remember any wine stain. The tenant stated she had no idea if the carpets were new when she moved in as there was no move-in condition report.

The advocate states the landlord has not proven that he suffered any actual loss due to the stain alleged to be on the carpet. The advocate stated that the photograph she received does not depict any staining.

Failure to return key

The landlord testified that the tenant (RH) failed to return the key to the unit at the end of the tenancy. The landlord seeks compensation in the amount of \$5.00 for having to replace the key.

The tenant testified she returned her key; however, she has no information if the co-tenant returned his.

Labour

The landlord testified that he was required to remove and dispose of the furniture items that were left behind by the tenants and there were also four or five bags of garbage he collected from the tenants' portion of the garage. The landlord stated it took him three hours to move and to disposal these items. The landlord seeks to be compensated at the rate of \$30.00 per hour for a total of \$90.00 compensation.

The tenant (BA) testified when she moved out the only remaining items were a kitchen table and futon mattress. The tenant admits that the co-tenant may have left a few items in the garage, but does not accept it was 4 to 5 bags of debris. The tenant stated that the garage was shared and some of the items may have been from the other occupants.

Cost of disposal charges

The landlord testified that it cost him a total of \$40.79 to dispose of the above items.

Fees for bailiff fees, photocopying

The landlord testified that he seeks to recover the service fees, and bailiff fees for having the tenant located and served with his application. The landlord further seeks compensation for photocopying material for arbitration.

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 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,

In this case, the evidence of the landlord was that the tenants breached the fixed term tenancy when he discovered that they had abandoned the rental unit in early April 2013. However, under the Act the tenant was not entitled to end the tenancy prior to the date specified in the tenancy agreement. I find the tenants have breach section 45(2) of the Act as the earliest date they could have legally ended the tenancy was October 31, 2013 as stated in the tenancy agreement.

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 April and May 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 of rent up to the earliest time that the tenants could have legally ended the tenancy.

I also find that landlords position on mitigate is reasonable as it was unlikely that due to the time of abandonment, that the landlord would be successful with find new tenants prior to rent being due under the tenancy agreement. Therefore, I find the landlord is entitled to unpaid rent for April and loss of rent for May and utilities in the amount of **\$3,140.00.**

Liquidated damages

The parties agreed the tenancy agreement provided a liquidated damages clause, which is a pre-determine amount for the cost of the landlord to re-rent the unit should the tenant breach the agreement.

While I have found the tenants breached the Act, I find the landlord has failed to prove a loss exist as the evidence was that the landlord did not attempt to re-rent the unit due to timing of the abandonment and the sale of the property. Therefore, I dismiss the landlord claim to recover liquidated damages.

Power consumed but not paid for

The evidence of the landlord was that the monthly amount is an estimate to cover the power usage over the year, and that it was based on the tenants signing a one year lease with the expectation that they will pay for much less in the actual power used in the winter and much more in the summer. The evidence of the landlord was as a result of the tenants breaching that agreement he should be allowed to adjust the prior bills to the actual amount that was consume by the tenant. The evidence of the tenant was the agreement was only to pay \$170.00.

Filed in evidence is a copy of the tenancy agreement which stated that the tenants are required to pay \$170.00 per month for power, may vary. I find the words "may vary" not to be clear in meaning and as a result unenforceable. Therefore, I find the landlord has failed to prove that the tenants violated the tenancy agreement. I dismiss this portion of the landlord's claim.

Cleaning the abandoned suite

Under section 37 of the Act, the tenants are required to return the rental unit to the landlords reasonably clean and undamaged, except for reasonable wear and tear.

Under the Residential Policy Guideline 1, which clarifies the rights and responsibilities of the parties for the premises under the Act, the tenants are generally expected to pay for cleaning cost where the property is left at the end of the tenancy in a condition that does not comply with “reasonable health, cleanliness and sanitary standards”

The evidence of the landlord was that the tenants left furniture, garbage and did not clean the unit, which included cleaning the appliance. The evidence of the tenant confirmed that the appliances were not cleaned when she vacated the premises as the co-tenant was to remain in the rental unit and is unaware of the condition left by the co-tenant.

As a result, I accept the undisputed testimony of the landlord that the co-tenant (RH) did not clean or remove all his belongings from the rental unit prior to vacating. I find the tenant breached the Act. I find the amount of \$160.00 reasonable for cleaning the entire unit which included the appliance. Therefore, I find the landlord is entitled to compensation for the cost of having the carpets cleaned in the amount of **\$160.00**.

Replacement cost of damage carpet

The evidence of the landlord was the carpets were new at the start of the tenancy and that the tenants caused damage to the carpets by spilling red wine. The evidence of the tenant was that they never spilt wine on the carpets and does not believe there were any stains caused by them. The evidence was a move-in inspection was not completed by the landlord as required by the Act.

Under the Act, the landlord is required to complete a move-in condition inspection report. This report is evidence of the condition of the rental unit at the start of the tenancy that was agreed by the parties. The tenant denies they are responsible for causing any stains on the rental unit carpet. As a result, I find the landlord has provided insufficient evidence to support that the carpets were damaged by the tenants.

Further, the landlord did not replace the carpets; the evidence of the landlord's was that the sale price of the home was reduced by the condition of the carpet. However, there is no evidence submitted by the landlord, such as the real estate contracts to support that a position. As a result, I find the landlord has not proven a loss exists and is not entitled to compensation for the carpets.

Failure to return key

The undisputed testimony of the landlord was the tenant (RH) failed to return the key at the end of the tenancy. The landlord seeks compensation in the amount of \$5.00 for the cost of replacing the key. I find the tenant breach the Act, when they failed to return all keys that were provided at the start of the tenancy. I find the amount claim by the landlord reasonable. Therefore, I grant the landlord compensation for replacing the key in the amount of **\$5.00**.

Labour

The evidence of the landlord was that he was required to remove and dispose of the furniture items that were left behind by the tenants and there were also four or five bags of garbage he collected from the tenants' portion of the garage. The landlord stated it took him three hours to move and to disposal these items. The evidence of the tenant (BA) that the only items that remained were a kitchen table and futon mattress. The evidence was that the co-tenant may have left a few items in the garage,

In this case, I accept the evidence of the landlord that the co-tenant left furniture and four or five bags of garbage, as the tenant (BA) left the rental prior to the co-tenant.

While the landlord claims it took three hours to remove and dispose of the items, that amount of time appear to be reasonable as this would include travel time. However, I find the rate of \$30.00 per hour unreasonable as the work was completed by the landlord. Therefore, I will only allow the landlord \$15.00 per hour for the three hours of work. Therefore, I find the landlord is entitled to compensation in the amount of **\$45.00**.

Cost of disposal charges

The evidence of the landlord was that it cost him a total of \$40.79 to dispose of the furniture items and the garbage. I find this amount to be reasonable and support by the debit from his account. Therefore, I find the landlord is entitled to compensation in the amount of **\$40.79**.

Fees for bailiff fees, photocopying

The evidence of the landlord was that he seeks to recover the service fees, and bailiff fees for having the tenant located and served with his application. The evidence was that the landlord seeks compensation for photocopying material for arbitration.

However, I find that there is no provision under the Act, which would allow the landlord compensation for these fees. Therefore, I find the landlord has failed to prove a violation of the Act or the tenancy agreement. I dismiss this portion of the landlord's claim.

I find that the landlord has established a total monetary claim of **\$3,440.79** comprised of the above described amounts and the \$50.00 fee paid for this application.

I order that the landlord retain the security deposit and interest of **\$700.00** in partial satisfaction of the claim.

The landlord has received from the tenant (BA) the sum of **\$1,779.35** as her portion towards the landlords claim and that was a full and final settlement. Therefore, under section 67 of the Act, I grant the landlord a formal order for the balance remaining of **\$911.44** against the co-tenant (RH)

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 against the co-tenant (RH).

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: September 20, 2013

Residential Tenancy Branch

