



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR MNR MNDC FF

Introduction

This hearing was convened as a result of the landlord's application for dispute resolution under the *Residential Tenancy Act* (the "Act") for an order of possession for unpaid rent or utilities, a monetary order for unpaid rent or utilities, for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and to recover the filing fee.

The tenants and the landlord attended the teleconference hearing. During the hearing the parties were given the opportunity to provide their evidence orally. A summary of the testimony is provided below and includes only that which is relevant to the hearing.

The landlord's evidence package, which included a USB drive, was excluded from the hearing as the evidence was submitted late and not in accordance with the rules of procedure. The tenants confirmed that they did not submit evidence in response to the landlord's application.

Preliminary and Procedural Matters

At the outset of the hearing, the landlord testified that the tenants vacated the rental unit on August 30, 2013, the same day the landlord filed her application for dispute resolution. As a result, the landlord requested to withdraw her request for an order of possession as the tenants had already given up possession of the rental unit by vacating the rental unit on August 30, 2013.

During the hearing, the landlord requested to withdraw her application in full which the tenants did not agree to as the tenants attended the hearing and were ready and willing to proceed. As a result, the landlord was not permitted to withdraw her application, and the hearing continued.

The landlord also requested an adjournment to provide an opportunity for her to submit further evidence in support of her claim. The landlord's request was denied as the parties were advised of the rules of procedure in the Notice of a Dispute Resolution Hearing, and were also advised the deadlines related to the submission of evidence were critical.

Issue to be Decided

- Is the landlord entitled to a monetary order under the *Act*, and if so, in what amount?

Background and Evidence

The parties agreed that a fixed term written tenancy agreement began on April 01, 2012 and was scheduled to revert to a month to month tenancy after October 1, 2013. Monthly rent in the amount \$1,800.00 was due on the first day of each month during the tenancy. The tenants paid a \$900.00 security deposit and a \$900.00 pet damage deposit at the start of the tenancy which the landlord continues to hold.

The landlord applied for dispute resolution on August 30, 2013, after the landlord issued a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "10 Day Notice") on the tenant, AS, dated August 21, 2013 on August 21, 2013 via personal service which the tenants did not dispute. The amount of unpaid rent owing on the 10 Day Notice was listed as \$6,200.00 and had an effective vacancy date of August 31, 2013. The tenants confirmed that they did not dispute the 10 Day Notice and that they vacated the rental unit on August 30, 2013.

The landlord is seeking a monetary order in the amount of \$8,000.00 comprised of the following which exceeds the amount of the landlord's application by \$456.69 and have been summarized based on the landlord's testimony during the hearing in the table below for ease of reference:

Item Description	Amount
1. Half of June 2013 rent owing	\$900.00
2. Unpaid July 2013 rent	\$1,800.00
3. Unpaid August 2013 rent	\$1,800.00
4. Loss of September 2013 rent	\$1,800.00
5. Dining room blind replacement	\$150.00
6. A. Carpet cleaning	A. \$350.00

B. Drywall repair	B. \$250.00
C. Re-painting of rental unit	C. \$350.00
D. Cleaning costs	D. \$150.00
E. Removing junk from rental unit	E. \$150.00
7. Flooring transition pieces - labour	\$100.00
8. Tool Rental	\$105.95
9. Flooring transition - materials	\$100.74
10. Fines related to Form "K"	\$450.00
TOTAL MONETARY CLAIM	\$8,456.69

I find the landlord is limited to the amount listed in her application as \$8,000.00 as I find that increasing the monetary claim against the tenants during the hearing, would be prejudicial to the tenants.

Settlement Agreement

During the hearing, the parties agreed to a mutually settled agreement on several items being claimed by the landlord. For ease of reference, I have summarized the items which were agreed to between the parties including the item description and the amount agreed to by the tenants to pay the landlord in compensation for the item described below:

Item Description	Amount
6. A. Carpet cleaning	\$350.00
6. D. Cleaning costs	\$150.00
6. E. Removing junk from rental unit	\$150.00
10. Fines related to Form "K"	\$450.00
TOTAL AGREED UPON BY MUTUAL AGREEMENT	\$1,100.00

Given the above, I will not consider items 6A, 6D, 6E and 10 further in this Decision other than to reflect the total amount of \$1,100.00 owing by the tenants to the landlord, which was agreed upon between the parties during the hearing.

Evidence Related to Remaining Items

Regarding items #1 to #4, the landlord stated that the tenants failed to pay half of June 2013 rent in the amount of \$900.00, failed to pay July 2013 rent of \$1,800.00, failed to

pay August 2013 rent of \$1,800.00 and that she suffered a loss of rent for September 2013 as new tenants did not move into the rental unit until October 1, 2013. The landlord confirmed during the hearing that in 2012, the landlord agreed to permit her brother to receive cash payments from the tenants and the landlord confirmed that she did not issue receipts for cash payments made by the tenants.

The tenants testified that they paid all of June 2013 rent, that they paid July 2013 rent of \$1,800.00 on July 2, 2013, paid August 2013 rent of \$1,800.00 on August 1, 2013; however agreed that September 2013 rent was not paid, but disputed the landlord's claim that they owe rent for September 2013 as they vacated the rental unit on August 30, 2013. The tenants did not submit any supporting evidence of payments made to the landlord for rent during the tenancy.

Regarding item #5, the landlord is claiming \$150.00 in compensation for damage to the dining room blinds. During the hearing, the parties confirmed that an incoming condition inspection report was not completed by the landlord at the start of the tenancy, and that an outgoing condition inspection report was not completed at the end of the tenancy. The landlord confirmed that her supporting evidence of damage to the blinds, a receipt in the amount of \$150.00, was not admitted in evidence due to the landlord's evidence being excluded from the hearing as described above. The tenants disputed that there was a blind in the dining room at the start of the tenancy.

Regarding item #6B, drywall repair, the parties were unable to come to a mutual agreement. The landlord alleged \$250.00 in drywall repairs were necessary due to damage caused by the tenants, and the tenants disputed that they damaged drywall during the tenancy. The landlord did not have any supporting documentary evidence regarding this portion of their claim.

Regarding item #6C, re-painting of rental unit, the parties were unable to come to a mutual agreement. The landlord alleged that the rental unit required \$350.00 in re-painting due to damage caused by the tenants, and the tenants disputed that they damaged the paint during the tenancy. The landlord did not have any supporting documentary evidence regarding this portion of their claim.

Regarding items #7 and #9, the landlord has claimed a total of \$200.74 for labour and materials related to damage to flooring transition pieces. The parties were unable to come to a mutual agreement regarding these items. The landlord alleged that the floor transition pieces were damaged by the tenants during the tenancy and the tenants disputed stated that the flooring transition pieces were already damaged at the start of

the tenancy. The landlord did not have any supporting documentary evidence regarding these portions of their claim.

Regarding item #8, the landlord stated that she was seeking \$105.95 for a “tool rental” and had a receipt; however, the receipt was not admitted into evidence. The tenants did not agree to this portion of the landlord’s claim. The landlord did not have any supporting documentary evidence regarding this portion of their claim.

Analysis

Based on the documentary evidence, undisputed testimony of the landlord, and on the balance of probabilities, I find the following.

Test for damages or loss

Awards for compensation are provided in sections 7 and 67 of the *Act*. Accordingly, an applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

Items # to #4 – Regarding these items, the landlord stated that the tenants owe half of June 2013 rent in the amount of \$900.00, failed to pay July 2013 rent of \$1,800.00, failed to pay August 2013 rent of \$1,800.00 and that she suffered a loss of rent for September 2013 as new tenants did not move into the rental unit until October 1, 2013.

The tenants testified that they paid all of June 2013 rent, that they paid July 2013 rent of \$1,800.00 on July 2, 2013, paid August 2013 rent of \$1,800.00 on August 1, 2013; however agreed that September 2013 rent was not paid, but disputed the landlord’s claim that they owe rent for September 2013 as they vacated the rental unit on August 30, 2013. The tenants did not submit any supporting evidence of payments made to the landlord for rent during the tenancy.

The landlord confirmed during the hearing that in 2012, the landlord agreed to permit her brother to receive cash payments from the tenants and the landlord confirmed that she did not issue receipts for cash payments made by the tenants. I caution the landlord

to comply with section 26(2) of the *Act* which requires that a landlord must provide a tenant with a receipt for rent paid in cash.

Pursuant to section 26 of the *Act*, a tenant must pay rent when it is due in accordance with the tenancy agreement. I prefer the evidence of the landlord that rent was not paid by the tenants in full for June 2013, was not paid at all for July 2013 or August 2013, and that the landlord suffered a loss of September 2013 rent as the tenants vacated the rental unit on August 30, 2013 pursuant to an undisputed 10 Day Notice alleging that they owed \$6,200.00 in unpaid rent. The tenants were aware of the landlord's application which included a claim for unpaid rent and failed to submit any supporting evidence that they paid the rent. At the very least, the tenants should have submitted bank statements in evidence to support that they withdrew cash for each of the months being claimed by the landlord, which they failed to do. As a result, I find the tenants breached section 26 of the *Act* by failing to pay rent when it was due in accordance with the tenancy agreement.

I find that the landlord did suffer a loss of September 2013 rent in the amount of \$1,800.00 which was a result the landlord serving the tenants with a 10 Day Notice for Unpaid Rent, which the tenants did not dispute for failing to pay rent when it was due in accordance with a fixed term tenancy agreement that was scheduled to revert to a month to month tenancy after October 1, 2013. However, the tenancy ended early due to the tenants vacating the rental unit on August 30, 2013, although the effective vacancy date was August 31, 2013 pursuant to the undisputed 10 Day Notice. I find that the landlord complied with section 7 of the *Act* by doing what was reasonable to minimize her loss by finding new tenants who moved into the rental unit effective October 1, 2013.

Given the above, I find the landlord is entitled to **\$6,300.00** in unpaid rent comprised of \$900.00 for the unpaid portion of June 2013 rent, \$1,800.00 for unpaid July 2013 rent, \$1,800.00 for unpaid August 2013 rent, and \$1,800.00 for loss of September 2013 rent.

Item #5 - The landlord is claiming \$150.00 in compensation for damage to the dining room blinds. During the hearing, the parties confirmed that an incoming condition inspection report was not completed by the landlord at the start of the tenancy, and that an outgoing condition inspection report was not completed at the end of the tenancy. The landlord confirmed that her supporting evidence of damage to the blinds, a receipt in the amount of \$150.00, was not admitted in evidence due to the landlord's evidence being excluded from the hearing as described above. The tenants disputed that there was a blind in the dining room at the start of the tenancy.

Given the above, I find the landlord has failed to meet the burden of proof to prove this portion of her claim. Therefore, **I dismiss** this portion of the landlord's application due to insufficient evidence, without leave to reapply.

Item #6B – The landlord has claimed \$250.00 for drywall repairs allegedly caused due to damage by the tenants. The tenants disputed that they damaged drywall during the tenancy. The landlord did not have any supporting documentary evidence regarding this portion of their claim.

Given the above, I find the landlord has failed to meet the burden of proof to prove this portion of her claim. Therefore, **I dismiss** this portion of the landlord's application due to insufficient evidence, without leave to reapply.

Item #6C – The landlord has claimed \$350.00 for costs related to re-painting of rental unit due to damage caused by the tenants. The tenants disputed that they damaged the paint during the tenancy. The landlord did not have any supporting documentary evidence regarding this portion of their claim.

Given the above, I find the landlord has failed to meet the burden of proof to prove this portion of her claim. Therefore, **I dismiss** this portion of the landlord's application due to insufficient evidence, without leave to reapply.

Items #7 and #9 - The landlord has claimed a total of \$200.74 for labour and materials related to damage to flooring transition pieces. The landlord alleged that the floor transition pieces were damaged by the tenants during the tenancy and the tenants disputed stated that the flooring transition pieces were already damaged at the start of the tenancy. The landlord did not have any supporting documentary evidence regarding these portions of their claim.

Given the above, I find the landlord has failed to meet the burden of proof to prove this portion of her claim. Therefore, **I dismiss** this portion of the landlord's application due to insufficient evidence, without leave to reapply.

Item #8 - The landlord stated that she was seeking \$105.95 for a "tool rental" and had a receipt; however, the receipt was not admitted into evidence. The tenants did not agree to this portion of the landlord's claim. The landlord did not have any supporting documentary evidence regarding this portion of their claim.

Given the above, I find the landlord has failed to meet the burden of proof to prove this portion of her claim. Therefore, **I dismiss** this portion of the landlord's application due to insufficient evidence, without leave to reapply.

As a majority of the landlord's application had merit, I grant the landlord the recovery of the **\$100.00** filing fee.

Monetary Order – I find that the landlord has established a total monetary claim of **\$7,500.00** comprised of \$6,300.00 in unpaid rent and loss of rent, \$1,100.00 for the mutually agreed upon items described above, plus the \$100.00 filing fee. I find this claim meets the criteria under section 72(2)(b) of the *Act* to be offset against the tenants' security deposit of \$900.00 and pet damage deposit of \$900.00, which the landlord continues to hold, in the total amount of \$1,800.00, which has accrued \$0.00 in interest since the start of the tenancy.

I authorize the landlord to retain the tenants' full security deposit of \$900.00 and full pet damage deposit of \$900.00 in partial satisfaction of the landlord's monetary claim, and I grant the landlord a monetary order pursuant to section 67 of the *Act* for the balance owing by the tenants to the landlord in the amount of **\$5,700.00**. This order must be served on the tenants and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

Conclusion

I find that the landlord has established a total monetary claim of \$7,500.00 as indicated above. I authorize the landlord to retain the tenants' full security deposit of \$900.00 and full pet damage deposit of \$900.00 in partial satisfaction of the landlord's monetary claim, and I grant the landlord a monetary order pursuant to section 67 of the *Act* for the balance owing by the tenants to the landlord in the amount of \$5,700.00. This order must be served on the tenants and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: November 08, 2013

Residential Tenancy Branch

