



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MND, MNSD, MNDC, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord for a monetary order for unpaid rent, for loss of rent, for damage or cleaning required at the rental unit, for compensation under the Act and the tenancy agreement, for an order to retain the security deposit in partial satisfaction of the claim and to recover the filing fee for the Application.

Both parties appeared at the hearing. The hearing process was explained and the participants were asked if they had any questions. Both parties provided affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

Both parties acknowledged receiving the others' documentary and photographic evidence. I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure; however, I refer to only the relevant facts and issues in this decision.

Issue(s) to be Decided

Is the Landlord entitled to monetary compensation from the Tenants?

Background and Evidence

The parties entered into a standard form, written tenancy agreement on September 4, 2012, for a fixed term of one year, ending on September 4, 2013. The tenancy started with an initial monthly rent of \$1,500.00. The Landlord testified that during the course of the tenancy the rent was reduced to \$1,100.00 per month, as the Tenants were experiencing financial difficulties. The Tenants paid a security deposit of \$750.00 on September 4, 2012. No interest is payable on security deposits received in 2012. The tenancy agreement was submitted in evidence.

The parties agree that no incoming or outgoing condition inspection reports were performed in accordance with the requirements of the Act.

The Tenants were experiencing problems paying the reduced rent. On or about July 5, 2013, the Tenants informed the Landlord in an email that they were moving out "one month early". The Tenants informed the Landlord in the email that she could keep the security deposit.

On July 12, 2013, the Landlord issued a 10 day Notice to End Tenancy for unpaid rent for June and July, totalling \$2,200.00. The Tenants did not pay the rent and vacated the rental unit on or about July 22, and returned to clean it on or about July 30, 2013.

The Landlord is claiming for the unpaid rent for June and July of 2013. The Tenants agree they owe the Landlord for June rent, but submit they should only have to pay the Landlord for 22 days in July, 2013.

The Landlord is claiming for August rent in accordance with the fixed term tenancy agreement, which was to end September 4, 2013. The Landlord testified she tried everything to rent the property out for August and worked with a property management company for this. The Landlord testified she also attempted to rent or sell the property on a rent to own basis. The Landlord did not submit any documentary evidence in support of her advertising or marketing attempts.

The Tenants submit that they feel they should not have to pay August rent because they were evicted, they did not see the Landlord advertising the property for rent and they deny having a fixed term tenancy agreement.

The Landlord claims for garbage arrears at the rental unit. The rental unit is located in a strata property and according to the Landlord the Tenants were supposed to pay for garbage collection to the strata. The tenancy agreement sets out that garbage collection is not included in the rent. The Landlord submitted a bill from the strata charging \$130.00 for the collection of garbage. The Landlord argued the Tenants should also pay a fine for being late on this fee, as the strata charges a fine.

The Tenant testified that they tried to pay the garbage fee but the strata informed them that it was part of the strata fee.

The Landlord claimed \$100.00 for lock replacement at the rental unit. I note that during this hearing this claim was dismissed, as the Tenants had returned the keys to the Landlord and therefore, if the Landlord wanted to change the locks for the next renter, this would be a cost of the Landlord alone.

The Landlord claims for yard clean up and maintenance, based on an estimate she received, of \$100.00. The Tenants agreed to this item.

The Landlord claims \$200.00 for damage to the patio gate, a fence and the patio. The Landlord supplied photographs in support of this. The Landlord claims for painting these and damage.

The Tenants deny damaging these and state they did not know if these were even painted. The Tenant testified that the part of the porch sunk during the tenancy and that they did not know how well these were built.

The Landlord claims \$120.00 for cleaning at the rental unit, estimating it will take five hours to clean. The Landlord submitted photos of the window frames, stove, baseboards, and other areas she claims the Tenants failed to clean. The Landlord also claims for carpet cleaning of \$89.00.

The Tenants claim these pictures were taken before July 30, the day they came to clean the rental unit. They claim the carpets were not cleaned when they moved in and they should not have to clean the carpets.

The Landlord claims for a Gazebo that was damaged at the rental unit. The Tenants agree to pay \$300.00 for this.

The Landlord had also claimed for the cost of photographs to provide in evidence; however, it was explained to the Landlord that this was a cost that they had to bear to prove their claim.

Analysis

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities.

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.

In this instance, the burden of proof is on the Landlord to prove the existence of the damage/loss and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the Tenants. Once that has been established, the Landlord must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the Landlord did everything possible to minimize the damage or losses that were incurred.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

Based on all of the above, the evidence and testimony, and on a balance of probabilities, I find as follows.

I find the Tenants breached the Act and tenancy agreement by failing to pay rent when due for the months of June and July. The Tenants are responsible to pay all of the rent for July, as this was a fixed term tenancy and although they vacated the rental unit they were still responsible to pay all the rent under the tenancy agreement.

Therefore, I allow the Landlord's claim for June and July rent in the amount of **\$2,200.00**

The breaches of the Tenants and the Notice to End Tenancy given by the Landlord do not prevent the Landlord for claiming for loss of rent for August, as the Tenants and Landlord had a fixed term tenancy contract through to September. The Tenants were still responsible to pay August rent to the Landlord under this contract; however, under section 7 of the Act the Landlord was required to mitigate her losses and attempt to rent as soon as possible. In this instance the Landlord provided insufficient evidence of her attempts to rent the unit. For example, there were no copies of advertisements showing the rental unit was available. Therefore, I find the Landlord failed to prove she mitigated her losses and I dismiss the claim for August rent without leave to reapply.

I allow the claim of the Landlord for garbage collection fees. The tenancy agreement did not include garbage collection in the rent and the Tenants acknowledged they owed this and they did make an effort to pay this; however, the strata apparently refused this payment. I allow the Landlord **\$130.00** for this based on the invoice from the strata. I do not allow the fines claimed by the Landlord as there is insufficient evidence from the Landlord that she was fined for late garbage.

The Tenants agreed to the claims for yard cleanup of \$100.00 and the cost of the gazebo of \$300.00. I allow the Landlord **\$400.00** for these two claims.

I dismiss the claim for damage to the patio or gate or fences, without leave to reapply. I find the Landlord had insufficient evidence to prove the condition of these at the start of the tenancy and failed to prove the Tenants did any of the alleged damages.

I dismiss the claim of the Landlord for cleaning the rental unit. I accept the undisputed testimony of the Tenants that the photographs of the rental unit were taken before they had an opportunity to clean the rental unit.

I allow the claim of the Landlord for carpet cleaning in the amount of **\$89.00**. This was a responsibility of the Tenants to have cleaned before they left the rental unit, under the policy guidelines to the act.

Section 67 of the Residential Tenancy Act states:

Without limiting the general authority in section 62(3) [*director's authority*], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

Based on the foregoing, I find that the Landlord has established a total monetary claim of **\$2,869.00**, comprised of the above awards and the \$50.00 fee paid by the Landlord for this application.

I order that the Landlord to retain the deposit of \$750.00 in partial satisfaction of the claim and I grant the Landlord an order under section 67 for the balance due of **\$2,119.00**. This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

Conclusion

The Landlord has been partially successful in this claim, and has proven the Tenants breached the Act and tenancy agreement in several instances. The Tenants also agreed with portions of the Landlord's claims. The Landlord is granted a monetary award and may keep the security deposit in partial satisfaction of the claims, and the Tenants are ordered to pay the Landlord the balance due of **\$2,119.00**.

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 29, 2013

Residential Tenancy Branch

