



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND MNR MNSD FF

Introduction

This hearing was convened as a result of the landlords' application for dispute resolution under the *Residential Tenancy Act* (the "Act") for a monetary order for unpaid rent or utilities, for damage to the unit, site or property, to keep all or part of the security deposit or pet damage deposit, and to recover the filing fee.

An agent for the landlord (the "agent") appeared at the teleconference hearing and gave affirmed testimony. During the hearing the agent was given the opportunity to provide her evidence orally. A summary of the evidence is provided below and includes only that which is relevant to the hearing.

As the tenants did not attend the hearing, service of the Notice of a Dispute Resolution Hearing (the "Notice of Hearing") was considered. The agent testified that the Notice of Hearing, application and evidence was served on the tenants by registered mail on December 18, 2013, and that both tenants were listed on one registered mail package. The agent clarified that within the one registered mail envelope were two envelopes, one listed for each of the two named respondent tenants. The agent provided one registered mail tracking number in evidence, which according to the registered mail tracking website, indicates that tenant "SM" signed for the registered mail on January 6, 2014.

Based on the above, I am satisfied that tenant SM was sufficiently served in accordance with the *Act* as of January 6, 2014; however, I am not satisfied that tenant "PN" was sufficiently served under the *Act*. Section 89(1) of the *Act* and section 3.1 of the Rules of Procedure require that each respondent be served with the application for dispute resolution. Given the above, and given that I am only satisfied that tenant SM was sufficiently served under the *Act*, as she was the only tenant to sign for the registered mail package, if the landlords are successful with any portion of their monetary claim

and a monetary order is granted, any resulting monetary order pursuant to section 67 of the *Act* would name tenant SM only.

Issues to be Decided

- Are the landlords entitled to a monetary order under the *Act*, and if so, in what amount?
- What should happen to the tenants' security deposit under the *Act*?

Background and Evidence

A copy of the tenancy agreement was submitted in evidence. A fixed term tenancy began on September 6, 2013, and was scheduled to revert to a month to month tenancy after August 31, 2014. Monthly rent in the amount of \$950.00 was due on the first day of the month. A security deposit of \$475.00 was paid by the tenants at the start of the tenancy, which the landlords continue to hold. The agent testified that the tenants failed to pay a pet damage deposit during the tenancy.

The agent testified that on November 28, 2013, the tenants communicated by text to arrange an outgoing condition inspection for November 29, 2013. The agent stated that the tenants failed to provide written notice that they would be vacating, although the landlords submitted in evidence a document dated October 18, 2013 which indicates that the tenants were providing written notice that they intended to vacate and break the lease effective at the "end of November".

The agent stated that the outgoing condition inspection report was completed with the tenants on November 29, 2013, which was the day the tenants vacated the rental unit. The agent testified that the tenants failed to pay rent for December 2013, and that the landlords suffered a loss of rent for December 2013 in the amount of \$950.00 as a result.

The landlords have also claimed \$50.00 for the removal of a carpet stain. The agent referred to the outgoing condition inspection report submitted in evidence to support that a stain was left by the tenants in the second bedroom. The agent stated that \$50.00 was comprised of two hours of cleaning at \$25.00 per hour, and that the landlords were not charging the tenants for the cost of the cleaning products. The agents also referred to section #5 of the tenancy agreement addendum which reads in part:

"5. Premises are clean upon move in/per condition report and tenant is responsible for same clean condition on move out or else \$25hr cleaning fee will

be deducted from deposit. This includes cleaning of all surfaces and interior windows & sills.”

[reproduced as written]

The landlords filed their application for dispute resolution claiming towards the tenants' security deposit on December 13, 2013.

Analysis

Based on documentary evidence and the undisputed testimony of the agent provided during the hearing, and on the balance of probabilities, I find the following.

Test for damages or loss

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 landlords 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 landlords must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the landlords did everything possible to minimize the damage or losses that were incurred.

Notice from tenants – The landlords submitted a letter from the tenants dated October 18, 2013 which indicated that they would be breaking the lease and vacating the rental unit by the “end of November”. Section 45 of the *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, that rent is payable under the tenancy agreement.

(3) If a landlord has failed to comply with a material term of the tenancy agreement or, in relation to an assisted or supported living tenancy, of the service agreement, and has not corrected the situation within a reasonable period after the tenant gives written notice of the failure, the tenant may end the tenancy effective on a date that is after the date the landlord receives the notice.

(4) A notice to end a tenancy given under this section must comply with section 52 *[form and content of notice to end tenancy]*.

[emphasis added]

Given the above, and in the absence of any evidence from the respondent tenants to support that the tenants provided written notice to the landlord of a failure to comply with a material term of the tenancy agreement and provided a reasonable period after the tenants gave written notice of the failure, **I find** the tenants breached section 45 of the *Act* by failing to provide notice to end the tenancy in accordance with section 45 of the *Act*, as the tenancy was a fixed term tenancy which was not scheduled to revert to a month to month tenancy until August 31, 2014.

Claim for loss of December 2013 rent – Further to my finding above that the tenants breached section 45 of the *Act*, **I find** the landlords have met the burden of proof for this portion of their claim and are entitled to compensation from the tenants in the amount of **\$950.00**, for the loss of December 2013 rent.

Claim for carpet cleaning – The landlords have claimed \$50.00 for the removal of a carpet stain. I find the outgoing condition inspection report submitted in evidence supports that a stain was left by the tenants in the second bedroom at the end of the tenancy. The agent stated that \$50.00 was comprised of two hours of cleaning at \$25.00 per hour, and that the landlords were not charging the tenants for the cost of the cleaning products. Section 37 of the *Act* states:

Leaving the rental unit at the end of a tenancy

37 (2) When a tenant vacates a rental unit, the tenant must

(a) leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear, and

(b) give the landlord all the keys or other means of access that are in the possession or control of the tenant and that allow access to and within the residential property.

[emphasis added]

I find the tenants failed to leave the rental unit in reasonably clean condition as required by section 37 of the *Act* based on the condition inspection report and the undisputed testimony of the agent. **I find** the landlords have met the burden of proof in proving this portion of their claim for carpet cleaning and that the amount being claimed is reasonable. Therefore, **I grant** the landlords **\$50.00** for carpet cleaning.

As the landlords have succeeded with their application, **I grant** the landlords the recovery of their filing fee in the amount of **\$50.00**.

Given the above, **I find** that the landlords have established a total monetary claim of **\$1,050.00** comprised of \$950.00 in loss of December 2013 rent, \$50.00 for carpet cleaning, plus the \$50.00 filing fee. **I ORDER** the landlords to retain the tenants' full security deposit of \$475.00, which has accrued no interest since the start of the tenancy, in partial satisfaction of the landlords' monetary claim. **I grant** the landlords a monetary order pursuant to section 67 of the *Act*, for the balance owing by the tenant SM to the landlords in the amount of **\$575.00**. This order must be served on the tenant SM and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

Conclusion

The landlords have established a total monetary claim of \$1,050.00. The landlords have been ordered to retain the tenants' full security deposit of \$475.00 in partial satisfaction of the landlords' monetary claim and the landlords have been granted a monetary order against tenant SM pursuant to section 67 of the *Act* for the balance due by tenant SM to the landlords in the amount of \$575.00. This order must be served on tenant SM 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: March 13, 2014

Residential Tenancy Branch

