



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MNSD, MNDC

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. As the tenant did not attend the hearing, service of the Notice of Dispute Resolution Hearing was considered.

The Residential Tenancy Branch Rules of Procedure states that 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 served personally on the tenant at her place of work, which was witnessed. The landlord stated that the tenant then choose to toss the papers under her work station.

I find that the tenant has been duly served in accordance with the Act.

The landlord agent appeared gave testimony and was provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

Preliminary matter

In this case, the landlord has written the tenant's surname as H... or G... The landlord explained that the tenant goes by two different surnames. As a result, I have amended the style of cause to read JH also known as JG.

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 tenancy began on December 1, 2013. Rent in the amount of \$650.00 was payable on the first of each month. A security deposit of \$325.00 was paid by the tenant. The landlord discovered the rental unit abandoned on January 1, 2014.

The landlord claims as follows:

a.	Unpaid rent January 2014	\$ 650.00
b.	Damages	\$ 195.00
c.	Filing fee	\$ 50.00
	Total claimed	\$ 895.00

Unpaid rent January 2014

The landlord testified that in December 2013, she served the tenant with a 1 Month Notice to End Tenancy for Cause, with an effective vacancy date of February 1, 2014. The landlord stated she discovered on January 1, 2014, that the tenant had abandoned the rental unit. The landlord stated she was not expecting the tenant to vacate earlier than February 1, 2014, as the tenant did not provide any written notice to end the tenancy earlier. The landlord seeks to recover unpaid rent for January 2014, in the amount of \$650.00.

Damages

The landlord testified that the tenant failed to remove all their garbage at the end of the tenancy. The landlord seeks to recover the disposal fees cost of \$10.00.

The landlord testified that the tenant failed to leave the rental unit cleaned and all the kitchen cupboards, the refrigerator and the bathroom floor needed to be clean. The landlord stated she seeks to recover the amount of a \$100.00 that she paid to the neighbor for cleaning.

The landlord testified that the tenant failed to return the keys when she vacated the rental unit and she had to hire a locksmith to change the locks. The landlord seeks to recover the amount of \$85.00.

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 7(1) of the Act states that if a landlord or tenant does not comply with the Act, regulation or tenancy agreement, the non-comply landlord or tenant must compensate the other for damage or loss that results.

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.

Unpaid rent January 2014

Section 45 of the Residential Tenancy Act states:

45 (1) A tenant may end a periodic 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, and
(b) 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

In this case, I accept the undisputed evidence of the landlord that the tenant did not give notice to end the tenancy and abandoned the rental unit on January 1, 2014. Under section 45(1) of the Act the tenant was required to provide the landlord with at least one month notice to end the tenancy.

I find that the tenant has breached the Act as the earliest date they could have legally ended the tenancy was on February 1, 2014. As that was the effective vacancy date in the undisputed 1 Month Notice to End the Tenancy for Cause, and the landlord was expecting the tenant to pay rent for January 2014. Therefore, I find the landlord is entitled to recover loss of rent for January 2014, in the amount of **\$650.00**

Damages

Under section 37 of the Act, the tenant is 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.

In this case, I accept the undisputed evidence of the landlord that the tenant did not clean the rental unit to a reasonable standard. I find the tenant breached the Act, when they failed to clean the rental unit and this caused losses to the landlord. Therefore, I find the landlord is entitled to recover the cleaning costs in the amount of **\$100.00**

Under the Residential Policy Guideline 1, which clarifies the rights and responsibilities of the parties for the premises under the Act, the tenant is responsible for the removal of garbage unless there is an agreement to the contrary.

In this case, I accept the undisputed evidence of the landlord that the tenant did not remove all garbage. I find the tenant breached the Act, when they failed remove the garbage and this caused losses to the landlord. Therefore, I find the landlord is entitled to recover the garbage fee in the amount of **\$10.00**.

Under the Residential Policy Guideline 1, the tenant must return all keys at the end of the tenancy.

In this case, I accept the undisputed evidence of the landlord that the tenant did not return all keys. I find the tenant breached the Act, when they failed to return the keys to the landlord and this caused losses to the landlord. I find the amount of \$85.00 for having to pay a locksmith reasonable. Therefore, I find the landlord is entitled to recover the cost of the locksmith in the amount of **\$85.00**.

I find that the landlord has established a total monetary claim of **\$845.00** comprised of the above described amounts.

I order that the landlord retain the security deposit and interest of **\$325.00** in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of **\$520.00**.

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(s) are/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: April 22, 2014

Residential Tenancy Branch

