



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MT, CNR, OPR, MNSD, MNR, MND, FF

Introduction

This hearing was convened in response to applications by the landlord and the tenants.

The landlord's application is seeking orders as follows:

1. For an order of possession;
2. For a monetary order for unpaid rent;
3. For a monetary order for damages
4. To keep all or part of the security deposit; and
5. To recover the cost of filing the application.

The tenants' application is seeking orders as follows:

1. To allow a tenant more time to make an application to cancel a notice to end tenancy;
2. Return all or part of the security deposit; and
3. To recover the cost of filing the application.

Both parties appeared, gave 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 at the hearing.

Preliminary matter

At the outset of the hearing the both parties agreed the tenants vacated the rental unit on February 17, 2014. Therefore, the landlord's application for an order of possession and the tenants' application to allow more time to make an application to cancel a notice to end tenancy are no longer required to be heard.

At the outset of the hearing the tenants indicated they were not aware of the landlord's application for dispute resolution.

The landlord stated their application for dispute resolution and notice of hearings were sent to the tenants by registered mail, at the service address the tenants provided in their application. The landlord stated the Canada post track history indicates the packages were refused by the respondents. Filed in evidence are copies of the Canada posts tracking numbers and copies of the envelopes which are marked items refused by recipients.

The tenant MC, stated they received notification from Canada post that there were packages waiting for their pickup, however, they were unable to retrieve them due to not having sufficient identification.

In this case, the tenants provided a service address where all material was to be given. The landlord sent her application for dispute resolution to the address provided by the tenants. The tenant MC, acknowledged receiving notification from Canada post, the Canada post track indicated the packages were refused by all three recipients.

Under the Act, when a document is sent by registered mail it is deemed served five days later. I find the tenants were served in accordance with the Act. Refusal to pick up the packages are not grounds for review.

During the hearing the tenant MC, provided testimony which is recorded in my decision. However, the tenant MW, became angry and chose to exit the hearing prior to the conclusion of the hearing. The tenants MC and RW, did not remain on the line, as a result, the balance of the hearing proceeded in absentia of the tenants.

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?
Are the tenants entitled to double the security deposit?

Background and Evidence

The tenancy began on May 1, 2013. Rent in the amount of \$750.00, was payable on the first of each month. A security deposit of \$375.00 was paid by the tenants. The tenancy ended on February 17, 2014.

Landlord's application

The landlords claim as follows:

a.	Unpaid rent for February 2014	\$ 550.00
b.	Unpaid utilities	\$ 560.70
c.	Repairs	\$ 61.15
d.	Cleaning	\$ 375.00
e.	Registered mail	\$ 62.00
f.	Filing fee	\$ 50.00
	Total claimed	\$1,658.85

Unpaid rent for February 2014

The landlord testified that the tenants failed to pay all rent owed for February 2014, and were served with a notice to end tenancy for non-payment of rent. The landlord seeks to recover unpaid rent in the amount of \$550.00.

The tenant MC testified they did not pay the full amount of rent due for February 2014.

Unpaid utilities

The landlord testified that the tenants failed to pay all utilities owed. The landlord stated the amount of \$213.81, was transferred to her property taxes and the balance of the last invoice was in the amount of \$346.79. The landlord seeks to recover unpaid utilities in the amount of \$560.70. Filed in evidence is the utility account statement.

The tenant MC testified that when they were served notice to end the tenancy the amount for unpaid utilities was listed at \$12.89. The tenant MC agreed they did not pay for the utilities that were invoiced after they vacated the premises.

The landlord argued that the reason why the amount was listed at \$12.89, on the notice to end tenancy was because she had not received the account statement until after the tenancy had ended and that is when she discovered the amount of \$213.81 was transferred to her property taxes.

Repairs

The landlord testified that the tenants caused damage to the rental unit as the microwave door was cracked and the bedroom door guide was broken. The landlord stated the cost of the repair was \$61.15. Filed in evidence is a receipt.

The tenants provided no testimony as the tenant MW, chose to exit the hearing prior to its conclusion.

Cleaning

The landlord testified that the tenants left the rental unit dirty and she was required to hire any pay for cleaning cost. The landlord seeks to recover the amount the amount of \$275.00. Filed in evidence is a receipt for cleaning.

Filed in support of the landlord is a written statement of the BK, cleaning services, which provides a breakdown of cleaning services, provided.

The landlord testified that the tenants left the carpets dirty at the end of the tenancy and the she had to pay the amount of \$105.00 to have the carpets shampooed.

The tenants provided no testimony as the tenant MW, chose to exit the hearing prior to its conclusion.

Registered mail

The landlord writes that they seek compensation for the cost of sending their hearing packages by registered mail.

The tenants' application

The tenants claim as follows:

a.	Double the security deposit	\$ 750.00
b.	Filing fee	\$ 50.00
	Total claimed	\$ 800.00

The tenants write in their application that they seek double the security deposit.

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, each party has the burden of proof to prove their respective 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.

Landlord's application

Unpaid rent for February 2014

Section 26 of the Residential Tenancy Act states:

26 (1) A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

The evidence of the landlord and the tenant MC was that rent for February 2014, was not paid in full, when due under the terms of the tenancy agreement. I find the tenants have breached section 26 of the Act when they failed to pay all rent due under the tenancy agreement and this has caused losses to the landlord. Therefore, I find the landlord is entitled to recover unpaid rent for February 2014, in the amount of **\$550.00**.

Unpaid utilities

In this case, the tenant MC acknowledged that they did not pay any utilities that were invoiced after the tenancy ended. I have reviewed the utilities invoice, which the account details indicate the time period for this invoice is from December 20, 2013 to February 28, 2014. The amount due is \$346.79, however, that amount does not include the amount of \$213.91, as that amount is shown as transferred to the landlords property on January 2, 2014. I find the tenants have breached the Act, when they failed to pay the utilities and this caused losses to the landlord. Therefore, I find the landlord is entitled to recover unpaid utilities in the amount of **\$560.70**.

Section 37 of the Residential Tenancy Act states:

37 (2) When a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.

Repairs

In this case, the undisputed testimony of the landlord was that the tenants broke the microwave door, and the handle to the closet door. As a result, I find the tenants have breached section 37 of the Act, when they failed to leave the rental unit undamaged. Therefore, I find the landlord is entitled to compensation for the cost to have these items repaired in the amount of **\$61.15**.

Cleaning

In this case, the undisputed testimony of the landlord was that the tenants did not clean the rental unit or the carpets. As a result, I find the tenants have breached section 37 of the Act, when they failed to clean rental unit or the carpets. Therefore, I find the landlord is entitled to compensation for the cost cleaning and carpet cleaning in the amount of **\$375.00**.

Registered mail

In this case, the landlord seeks to recover the cost of sending their hearing packages by registered mail. However, there are no provisions under the Act that allow either party to recover their cost of sending their hearing packages. Therefore, I dismiss this portion of the landlord's claim.

I find that the landlord has established a total monetary claim of **\$1,596.85** comprised of the above described amounts and the \$50.00 fee paid for this application.

The tenants' application

In this case, the tenants seek double the security deposit. However, the tenants have failed to prove a violation of the Act by the landlord. The landlord's application claiming against the security deposit was filed within 15 days after the tenancy ended. Therefore, I find the tenants are not entitled to double the security deposit.

As the tenants were not successful with their application they are not entitled to recover the cost of the filing fee from the landlord.

Conclusion

In light of the above finding, I grant the landlord a monetary order and I order that the landlord retain the security deposit of **\$375.00** in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of **\$1,221.85**.

This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

The tenants' application for return of double the security deposit is dismissed.

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 1, 2014

Residential Tenancy Branch

