



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding REMAX CHECK REALTY
and [tenant name suppressed to protect privacy]

DECISION

Code MNDC, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord for a monetary order for money owed or compensation for damages to the unit.

The landlord's agent 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 the respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing.

The landlord's agent testified the Application for Dispute Resolution and Notice of Hearing were sent by registered mail sent on November 22, 2013, a Canada post tracking number was provided as evidence of service.

Section 90 of the Act determines that a document served in this manner is deemed to have been served five days later. I find that the tenant has been duly served in accordance with the Act.

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

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts and issues in this decision.

Issues to be Decided

Is the landlord entitled to monetary order for money owed or compensation for damages or loss under the Act?

Background and Evidence

The tenancy began July 2006. Current rent in the amount of \$645.00 was payable on the first of each month. A security deposit of \$270.00 was paid by the tenant.

The landlord's agent stated that on June 20, 2013, they received an order of possession and a monetary order; the landlord stated the monetary order remained unpaid at the ended of the tenancy and they applied the tenant's security deposit as permitted by section 38(3) of the Act, to the outstanding balance.

The landlord claims as follows:

a.	Loss of rent for July 2013	\$ 645.00
b.	August storage	\$ 112.50
c.	September storage	\$ 112.50
d.	Cleaning of the left behind	\$ 120.00
e.	Removal of items rental unit	\$ 160.00
f.	Carpet cleaning	\$ 80.00
g.	Filing fee	\$ 50.00
	Total claimed	\$1,280.00

The landlord's agent testified that after they received the order of possession the tenant keep telling them that he was coming back to remove his belonging from the rental unit, however, the tenant did return until the end of September 2013. The landlord seeks to recover loss of rent for July 2013.

The landlord's agent stated that they seek only to recover the storage cost of the tenant's belonging for the month of August and September 2013 and they based the amount claim, on the cost of a 9X12 storage locker, although the tenant's belongings remained in the rental unit. The landlord seeks to recover the cost of \$225.00. Filed in evidence is a storage rental fee price list.

The landlord's agent testified that when the tenant returned and removed his belongings in September 2013, he left a lot of garbage and other items behind which had to be removed and disposed. The landlord stated it took the owners six hours of labour and they seek to be paid at the rate of \$20.00 per hour. The landlord seeks to recover the amount of \$120.00.

The landlord's agent testified that after the owners had removed the garbage, they hired a cleaning company to clean the rental unit as the tenant made no attempt to clean. The landlord's agent stated they seek to recover the cost they paid for cleaning in the amount of \$160.00. Filed in evidence is copy of an invoice for cleaning.

The landlord's agent testified that the tenant did not clean the carpets at the end of the tenancy and they paid to have the carpets cleaned. The landlord seeks to recover the cost of cleaning the carpet in the amount of \$80.00. Filed in evidence is a receipt.

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.

In this case, The undisputed evidence of the landlord's agent was that on June 20, 2013, they received an order of possession as the tenant failed to pay rent and that the tenant did not remove his belongings from the rental unit.

As a result of the tenant not complying with the order of possession as the tenant failed to deliver vacant possession of the rental premises to the landlord. The landlord suffered a loss of rent for July 2013.

The landlord is entitled to an amount sufficient to put the landlord in the same position as if the tenant had not breached the tenancy agreement or Act. This includes compensating the landlord for any loss of rent. Therefore, I find the landlord is entitled to recover loss of rent for July 2013, in the amount of **\$645.00**.

Although the landlord may have been entitled to recover the full loss of rent for August and September 2013, the landlord only claimed to recover the cost of storing the tenant's belonging. That position is reasonable. Therefore, I find the landlord is entitled to recover storage costs in the amount of **\$225.00**.

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.

The undisputed evidence was that the tenant left garbage and other items behind and the owners spent six hours removing and disposing the items, I find the tenant breached the Act, when he failed to remove all garbage and other items out of the unit, and this caused losses to the landlord. Therefore, I find the landlord is entitled to recover their labour in the amount of **\$120.00**.

The undisputed evidence was that the tenant made no attempt to clean the rental unit and after the garbage was removed, they paid to have the unit cleaned. As a result, I find the tenant has breached section 37 of the Act, when they failed to leave the rental unit reasonable cleaned. Therefore, I find the landlord is entitled to recover the cost they paid to clean the unit in the amount of **\$160.00**.

The undisputed evidence was that the tenant did not clean the carpets at the end of the tenancy.

Under the Residential Policy Guideline 1, which clarifies the rights and responsibilities of the parties for the premises under the Act, the tenant is generally expected to clean the carpets if vacating after a tenancy of one year.

I find the tenant breached the Act, when they failed to clean the carpets and this caused losses to the landlord. Therefore, I find the landlord is entitled to compensation for the cost of having the carpets cleaned in the amount of **\$80.00**.

I find that the landlord has established a total monetary claim of **\$1,280.00** comprised of the above described amounts and the \$50.00 fee paid for this application.

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 order in the above amount.

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: March 11, 2014

Residential Tenancy Branch

