



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MNSD, FF

Introduction

This hearing was convened by way of conference call in response to a Landlord's Application for Dispute Resolution (the "Application") made by the Landlord for a Monetary Order for unpaid rent or utilities, to keep all or part of the pet damage or security deposit, and to recover the filing fee from the Tenants.

The Landlord appeared for the hearing and provided affirmed testimony and documentary evidence in advance of the hearing.

The Landlord served the Tenants with a copy of the original application, the amended copy of the application showing the increased monetary claim, and the evidence used for this hearing, all by registered mail. The Landlord provided the Canada Post tracking number for the original Application and the amended Application as evidence for the service of the documents. Section 90 of the Act states that documents served by mail are deemed to have been received five days after they are mailed. Based on this, and in the absence of any evidence from the Tenants to contradict this, I find that the Tenants were deemed served as required by the *Residential Tenancy Act* (the "Act").

There was no appearance for the Tenants or any submission of documentary evidence prior to the hearing, despite being served notice of the hearing in accordance with the Act. As a result, I have carefully considered the undisputed evidence of the Landlord in this decision as follows.

At the start of the hearing, the Landlord explained that the amended Application for the increased monetary claim comprises of the costs in evicting the Tenants which was done in the interim time after making the Application and also relates to damages to the rental suite which he discovered after the Tenant's were evicted. As a result, I amended the Landlord's Application for damage to the rental unit and money owed or compensation for loss or damage under the Act, pursuant to Section 64(3) (c) of the Act.

Issue(s) to be Decided

- Is the Landlord entitled to unpaid rent for January, February and March 2014?
- Is the Landlord entitled to late fees for unpaid rent?
- Is the Landlord entitled to costs associated with damage to the rental suite?
- Is the Landlord entitled to eviction costs?
- Is the Landlord entitled to keep all or part of the security deposit in partial satisfaction of the claim?

Background and Evidence

The Landlord testified that a written agreement for this tenancy was signed with the Tenants and began on September 15, 2013 for a fixed term of one year. Rent was payable by the Tenants in the amount of \$1,350.00 on the first day of each month. The Tenants paid \$675.00 on September 15, 2013 as a security deposit and \$675.00 on September 9, 2013 as a pet damage deposit, both of which the Landlord still retains.

However, the tenancy was ended on March 20, 2014 when the Landlord enforced an Order of Possession which he had received from the Residential Tenancy Branch through the Direct Request Process in December, 2013 for unpaid rent.

The Landlord completed a move in and move out condition inspection report and this was provided as evidence for the hearing. During the hearing the Landlord testified to the following amounts as part of his total monetary claim outstanding.

- **\$3,775.25** for rental arrears. The Landlord testified while he had obtained an Order of Possession in December, 2013 to evict the Tenants, he tried to work with them so that they could pay him the outstanding rent arrears. However, the Tenants failed to pay the full amount of rent for February and March, 2014 and failed to pay \$1,075.25 that was outstanding for January, 2014. The Landlord also claimed \$1,175.00 for November, 2013 rent but the Landlord had already been issued a Monetary Order for this through the Direct Request Proceedings in December, 2013; therefore, I did not consider this in the Landlord's claim amount for unpaid rent.
- **\$125.00** in late fees. The Landlord testified that as per the written tenancy agreement, the Landlord can charge \$25.00 for late payment of rent. The tenancy agreement also stipulates the Landlord can charge \$50.00 for each time the Tenant gives the Landlord a cheque and it is returned because of insufficient funds. The Landlord also claims \$50.00 for a returned cheque in October, 2013.

- **\$991.75** for eviction costs. This comprised of \$780.57 for bailiff costs, \$120.00 filing fee for the cost of obtaining the Writ of Possession from the courts and \$91.18 for the cost of changing the old locks to new locks. The Landlord provided receipts and invoices related to each of these items claimed.
- **\$1,072.50** for damage to the rental suite. The Landlord testified that at the end of the tenancy the Tenants failed to clean the rental suite and leave it undamaged. The Tenants had stained the carpet in the living room which had to be replaced and had left the carpets in the hallway and bedrooms dirty which had to be shampooed. The Landlord testified that he had the stained carpets in the living room replaced with laminate flooring as this was cheaper than replacing with carpet and had the remainder of the carpets cleaned. The Landlord also testified that he spent a considerable amount of time removing junk and garbage left behind by the Tenants to the dump and cleaning the rental suite including the kitchen and bathrooms. The Landlord provided photographic evidence and invoices as supporting evidence for this amount claimed. In addition, the condition inspection report indicates that the carpets were clean at the start of the tenancy and left dirty and stained at the end of the tenancy.

The Landlord also claimed \$5.79 for the costs of the hearing; however, I explained to the Landlord that these are costs which I am unable to award a party under the Act, as a party is responsible for bearing their own costs for Dispute Resolution Proceedings.

Analysis

Based on the undisputed testimony of the Landlord, the photographic evidence, the invoices to support the costs being claimed, and the condition inspection report, I have made the following findings in relation to the Landlord's claim as follows:

Section 26(1) of the Act states that a Tenant must pay rent when it is due under the tenancy agreement. In this case, I accept the Landlord's testimony that the Tenants failed to pay the Landlord rent for January, February and March, 2014 in the amount of **\$3,775.25** and I find that the Landlord is entitled to recover this from the Tenants.

Section 7(1) (d) of the Residential Tenancy Regulation allows a Landlord to charge a late fee and an administration fee up to \$25.00 for the return of the Tenant's cheque, as long as the written tenancy agreement provides for this. The Landlord claims \$50.00 each for the three cheques the Tenant provided during the tenancy which were returned as insufficient funds. Therefore, in accordance with the above regulation and the

tenancy agreement, I am only prepared to award the Landlord \$25.00 each for the three returned cheques for a total amount of **\$75.00**.

Section 37(2) of the Act requires a Tenant to leave a rental suite reasonably clean and undamaged at the end the tenancy. In addition, Section 21 of the Residential Tenancy Regulation states that a condition inspection report can be used as evidence of the state of repair and condition of the rental suite.

As a result, based on the undisputed evidence provided by the Landlord in relation to the damages caused by the Tenants, I find that the Landlord is entitled to recover these costs from the Tenants in the amount of **\$1,072.50**.

The Landlord also provided sufficient evidence, in the form of receipts and invoices, for the costs he incurred as a result of evicting the Tenant through the Writ of Possession, the bailiff costs and the costs of rekeying the rental suite. As a result, I am satisfied by this evidence and find that the Landlord is entitled to **\$991.75** for these costs.

As the Landlord has been successful in this matter, the Landlord is also entitled to recover from the Tenants the **\$100.00** filing fee for the cost of this Application. Therefore, the total amount awarded to the Landlord is **\$6,014.50**. As the Landlord already holds \$1,350.00 in the Tenants' deposits, I order the Landlord to retain this amount in partial satisfaction of the claim awarded pursuant to Section 38(4) (b) of the Act. As a result, the Landlord is awarded \$4,664.50.

Conclusion

For the reasons set out above, I grant the Landlord a Monetary Order pursuant to Section 67 of the Act in the amount of **\$4,664.50**. This Order must be served on the Tenants and may then be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: April 14, 2014

