



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MND, MNDC, MNSD, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord for a monetary order for unpaid rent, for loss of rent, for compensation under the Act and the tenancy agreement, for damage and cleaning of the rental unit, for an order to retain the security deposit in partial satisfaction of the claim and to recover the filing fee for the Application.

Only the Landlord and the owner of the property appeared at the hearing. They gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions to me.

The Landlord testified that he served the Tenants with the Notice of Hearing and the Application and documents in two ways. First he posted them to the door of the rental unit, and secondly, on February 28, 2014, he served them personally with the court appointed bailiff present. I find the Tenants were duly served in person on February 28, 2014.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary Issues

The Landlord had included in his claim an amount to recover legal fees of \$1,500.00 from the Tenants. It was explained to the Landlord that legal fees were not compensable under the Act. Following this the Landlord requested to amend his claim to remove the claim for legal fees of \$1,500.00, and to add a claim for the costs of the bailiff to enforce the writ of possession, in the amount of \$885.41. As the amount of the bailiff was less than what had initially been claimed for legal fees and the Tenants had

notice of the total amount claimed, I find there is no prejudice to the Tenants to allow the Landlord to amend his claim to a lesser amount. I allow the amendment and the Landlord was given leave to provide the invoice for the bailiff in evidence following the hearing, which was provided.

Issue(s) to be Decided

Is the Landlord entitled to monetary compensation from the Tenants?

Is the Landlord entitled to the other relief sought?

Background and Evidence

This tenancy began on September 1, 2013, with the parties entering into a one year fixed term, written tenancy agreement. The Tenants were to pay rent of \$750.00 per month on the first day of each month, and paid the Landlord a security deposit of \$400.00. The Landlord is reminded that security deposits must not exceed a half of one month of rent.

The Landlord testified that the Tenants began to fall behind in rent in the first two months of the tenancy. For the final four months of the tenancy they paid no rent at all.

The parties entered into a mutual agreement to end the tenancy in December of 2013; however, the Tenants breached the agreement when they failed to move out.

The Landlord issued the Tenants a 10 day Notice to End Tenancy for non payment of rent on or about January 2, 2014. The Tenants filed to dispute the Notice but were unsuccessful, and the Landlord was granted an order of possession for the rental unit. The Tenants failed to abide by the order of possession and did not move out. The Landlord testified he was required to have the court appointed bailiff enforce the order with a writ of possession, and remove the Tenants and their property.

The Landlord testified that the Tenants left the rental unit damaged and unclean. The Tenants also failed to pay hydro bills as required under the tenancy agreement.

The Landlord is claiming for costs to clean and repair the rental unit due to the condition it was left in by the Tenants.

The Landlord also claims for unpaid rent and the late fee under the tenancy agreement. I note the Landlord had a late fee in the tenancy agreement that exceeded the amount

allowable under the regulation and I find that this portion of the tenancy agreement is unenforceable. Therefore, I dismiss the claims for late rent fees and advise the Landlord to consult the regulation for the amount actually claimable which is not to exceed \$25.00.

The Landlord claims as follows:

a.	Unpaid rent for September and October of 2013	\$700.00
b.	Unpaid rent for November 2013 to February 2014	\$3,000.00
c.	Damaged door replacement	\$935.00
d.	Hydro bills	\$421.68
e.	Broken window replacement	\$209.40
f.	Bailiff and court fees	\$885.41
g.	Carpet cleaning	\$67.20
h.	Loss of rent for one month due to repairs & cleaning	\$750.00
i.	Cleaning rental unit	\$200.00
j.	Filing fee	\$100.00
	Total claimed	\$7,268.69

In evidence the Landlord submitted photographs of the rental unit. These indicate a door which has many scratches on it and a window which has been smashed. The Landlord testified that the door had appeared to have been scratched by the Tenants' dog. The Landlord testified that the door was approximately five years old, but the portion of the door scratched by the dog could not be replaced. Consequently the Landlord had to replace the entire door.

The photographs also indicate broken window blinds and a missing light fixture, which was not claimed for. The Landlord further testified he spent many hours cleaning and making repairs at the rental unit which he has also not claimed for.

The Landlord testified that due to the Tenants not leaving the rental unit until being removed by the bailiff at the end of February and because of the condition the Tenants left the rental unit in when they were removed, the Landlord suffered a loss of rent for March of 2014.

The Landlord also submitted into evidence receipts and invoices to support the above claims.

Analysis

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

Based on all of the above, the undisputed evidence and testimony, and on a balance of probabilities, I find as follows.

I find the Tenants breached section 26 of the *Act* and breached the tenancy agreement when they failed to pay all the rent due to the Landlord. I find the Landlord had to incur additional expenses such as hiring a bailiff to have the Tenants removed, due to the breaches of the Tenants.

I further find the Tenants did not clean the unit, or make necessary repairs to the door and window, in breach of section 37 of the *Act*, and these have caused losses to the Landlord. Furthermore, I find that due to the condition the rental unit was left in by the Tenants, the Landlord has suffered a loss of rent for one month.

The evidence indicates that the carpets were also not steam cleaned when the Tenants left.

Section 7 of the *Act* states:

(1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

[Reproduced as written.]

Policy guideline 40 sets out that,

“When applied to damage(s) caused by a tenant, the tenant’s guests or the tenant’s pets, the arbitrator may consider the useful life of a building element and the age of the item. Landlords should provide evidence showing the age of the item at the time of replacement and the cost of the replacement building item. That evidence may be in the form of work orders, invoices or other documentary evidence.

If the arbitrator finds that a landlord makes repairs to a rental unit due to damage caused by the tenant, the arbitrator may consider the age of the item at the time of replacement and the useful life of the item when calculating the tenant’s responsibility for the cost or replacement.”

[Reproduced as written.]

I allow the Landlord’s claim to replace the door; however, under the useful life of a door which is 20 years, and since it was five years old the door replacement should be depreciated by 25% and I allow the Landlord \$701.40 for the door.

I find the Landlord has proven the other losses as claimed above. I further find the Landlord took reasonable steps to mitigate these losses.

Section 67 of the Residential Tenancy Act states:

Without limiting the general authority in section 62(3) [*director’s authority*], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

[Reproduced as written.]

I find that the Landlord has established a total monetary claim of **\$7,034.89** comprised of the above described amounts and the \$100.00 fee paid for this application.

I order that the Landlord retain the deposit of **\$400.00** in partial satisfaction of the claim and I grant the Landlord an order under section 67 for the balance due of **\$6,634.89**.

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

Conclusion

I find the Landlord has proven the Tenants breached the Act and tenancy agreement by failing to pay rent, by failing to vacate under an order of possession, by failing to leave the rental unit clean and undamaged, and by failing to pay utility bills as required. The Landlord had to use a bailiff to have the Tenants removed and the Tenants are responsible to compensate the Landlord for all of the above losses.

I find all the breaches of the Tenants caused the Landlord to suffer a loss and I have ordered the Landlord may keep the security deposit in partial satisfaction of the claims and I have granted the Landlord a monetary order for the balance due of **\$6,634.89**

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: July 11, 2014

Residential Tenancy Branch

