



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Code OPR, MNR, MND, MNSD, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord for an order of possession for a monetary order for unpaid rent and utilities, 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 tenants did not attend the hearing, service of the Notice of Dispute Resolution Hearing was considered.

The Residential Tenancy Branch Rules of Procedure states that each 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 in person on Saturday, June 28, 2014, to each of the respondents. The tenants did not appear. I find that the tenants have been duly served in accordance with the Act.

The landlord 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.

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.

Preliminary matter

At the outset of the hearing the landlord stated the tenants' vacated the rental unit on June 30, 2014, and an order of possession is no longer required.

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 parties entered into a fixed term tenancy which began on October 1, 2013 and was to expire on September 1, 2014. Rent in the amount of \$2,100.00 was payable on the first of each month. A security deposit of \$1,050.00 was paid by the tenants.

The landlord claims as follows:

| | | |
|----|---------------------------|-------------------|
| a. | Unpaid rent for June 2014 | \$1,350.00 |
| b. | Unpaid utilities | \$ 450.40 |
| c. | Damages | \$ 873.50 |
| d. | Filing fee | \$ 50.00 |
| | Total claimed | \$2,723.90 |

Unpaid rent for June 2014

The landlord testified the tenants failed to pay rent for June 2014, in the amount of \$2,100.00 and were served with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities. The landlord stated the tenants paid the amount of \$750.00 towards the outstanding balance; however, failed to pay the balance due at the end of the tenancy. The landlord seeks to recover the amount of unpaid rent for June 2014, in the amount of \$1,350.00.

Unpaid utilities

The landlord testified that the tenants are required to pay the utilities under the terms of the tenancy agreement. The landlord stated the tenants failed to pay the utility bill for the billing period of February 8 to June 6, 2014, in the amount of \$378.20. The landlord stated the utility meter was also read on the date the tenants vacated the property and the amount due for utilities from June 6, 2014 to June 30, 2014 was \$72.40. The landlord seeks to recover unpaid utilities in the amount of \$450.40. Filed in evidence is a utility bill for the rental unit which supports the landlord's claim.

Damages

The landlord testified that the tenants did not clean the rental unit at the end of the tenancy and all the appliances required cleaning. The landlord stated the stove was extremely dirty. The landlord stated that he paid a cleaning services company the amount of \$75.60 to clean the rental unit. Filed in evidence is a receipt for clean, and photographs which support the landlord's claim.

The landlord testified that the tenants did not clean the carpets at the end of the tenancy as required by the tenancy agreement and he paid to have the carpets cleaned. The landlord seeks to recover the cost of cleaning the carpets in the amount of \$126.00. Filed in evidence is a receipt for carpet cleaning which supports the landlord's claim.

The landlord testified that the tenants left a large amount of garbage behind and he had to pay to have it removed. The landlord seeks to recover the cost of \$125.00. Filed in evidence are photographs, which support garbage was left behind. Filed in evidence is a receipt for garbage removal which supports the landlord's claim.

The landlord testified that the tenant also failed to mow the lawn, which was a term of their tenancy agreement. The landlord stated he paid to have the lawn mowed and seeks to recover the cost of lawn mowing in the amount of \$31.50. Filed in evidence is a receipt for lawn mowing which supports the landlord's claim.

The landlord testified that the tenants failed to return the keys at the end of the tenancy and he was required to change the locks. The landlord seeks to recover the cost of \$19.38. Filed in evidence is a receipt which supports the landlord's claim.

The landlord testified that the tenants also caused damage to an air vent that was above the wood stove, by removing the vent and damaging the drywall. The landlord stated one bi-fold door was broken as the door was off the track and the wooden slats were broken. The landlord stated the tenant also took the extension cord that was provided with the lawn mower. The landlord seeks to recover the cost for the materials in the amount of \$135.32. Filed in evidence are photographs of the bi-fold door, and the damage air vent. Filed in evidence is a receipt for materials which supports the landlord's claim.

The landlord testified that the damage the tenants caused to the drywall was repaired and the air vent reinstalled. The landlord seeks to recover the amount of \$99.96 for the labour cost he had to pay to repair the drywall. Filed in evidence is a receipt for drywall repair and photographs of the damage drywall which support of the landlord's claim.

The landlord testified that the dishwasher was damaged by one of the tenants when the other tenants no longer wanted him to reside in the rental premises. The landlord stated the tenant smashed the plastic surrounding of the dishwasher and it was not repairable. The landlord stated he had to purchase another dishwasher and the one that he selected was an older model because there was not a large selection to choose from and the features and colour of this dishwasher was similar to the damage dishwasher. The landlord seeks to recover the amount of \$260.74.

The landlord stated the total amount for damages that they seek to recover is \$873.50

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 for June 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 undisputed evidence of the landlord was the tenants did not pay all rent owed for June 2014. I find the tenants have breached section 26 of the Act when they failed to pay rent when due under the tenancy agreement and this has caused losses to the landlord. Therefore, I find the landlord is entitled to recover unpaid rent in the amount of **\$1,350.00**.

Unpaid utilities

I accept the undisputed testimony of the landlord that the tenants failed to pay all utilities owed under the terms of the tenancy agreement. I find the tenants have breached the Act, and the tenancy agreement when they failed to pay the utilities due and this has caused losses to the landlord. Therefore, I find the landlord is entitled to recover unpaid utilities in the amount of **\$450.40**.

Damages

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.

I accept the undisputed testimony of the landlord, that that tenants did not clean the rental unit or clean the carpets, did not remove their garbage from the premises and did not mow the grass at the end of the tenancy. I find the tenants have breached the Act, when the failed to leave the rental unit reasonably clean and this caused losses to the landlord. Therefore, I find the landlord is entitled to recover the cost of cleaning the premise in the total amount of **\$358.10**.

I further accept the undisputed testimony of the landlord that the tenant caused damage to the rental premise when they removed an air vent causing damage to the drywall, when they broke the bi-fold door and smashed the dishwasher. I am also satisfied that the tenants did not return the keys to the rental unit at the end of the tenancy to the landlord. I find the tenants have breached the Act, when the failed to make the repairs or return the keys and this caused losses to the landlord. Therefore, I find the landlord is entitled to recover the cost of repairs to the rental unit in the total amount of **\$515.40**.

I find that the landlord has established a total monetary claim of **\$2,723.90** comprised of the above described amounts and the \$50.00 fee paid for this application.

I order that the landlord retain the security deposit and interest of **\$1,050.00** in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of **\$1,673.90**.

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 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: August 22, 2014

