



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding NPR LIMITED PARTNERSHIP
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNR, MND, MNSD, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord for a monetary order for unpaid rent, 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 Agent for the Landlord 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 Agent testified that on April 16, 2014, the Tenant emailed the Landlord with a forwarding address for the return of his security deposit. The Landlord filed the Application to claim against the security deposit within 15 days and served the Tenant with the Application and Notice of this Hearing by sending it registered mail to the forwarding address provided by the Tenant. Under section 90 of the Act, the Tenant is deemed served with the Application and Notice of Hearing five days after mailing. I note that refusal or neglect to accept registered mail is not a ground for Review under the Act. I find the Tenant has been duly served under the Act.

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 Matter

Prior to this hearing, the Landlord had applied through the Direct Request Process and obtained an order of possession for the rental unit and a monetary order for rent due, both dated February 27, 2014. It appears the monetary order covered the rent for

December 2013 and January 2014. The file number for that Application is reproduced on the cover of this decision for ease of reference.

Issue(s) to be Decided

Is the Landlord entitled to monetary compensation from the Tenant?

Background and Evidence

This tenancy began on November 1, 2013, with the parties entering into a written tenancy agreement. The agreement was for a fixed term six month tenancy, at the end of which the Tenant was to vacate the rental unit. The monthly rent was \$675.00 and the Tenant paid the Landlord a security deposit of \$337.50 on October 11, 2013.

The Agent for the Landlord testified that the Tenant was late paying rent for the first month, November 2013, and then failed to pay rent for any of the following months.

As described above, the order of possession for the rental unit was to be effective two days after service and the Tenant vacated the property in early March of 2014; however, the Landlord claims they have not been paid all rent due and have incurred costs to clean the rental unit due to the condition it was left in by the Tenant.

The Landlord is claiming \$1,350.00 for rent for February and March 2014.

The Landlord had performed a condition inspection report although this was not provided in evidence.

The Landlord is claiming for \$275.00 in cleaning, at an hourly rate of \$25.00 per hour. The Landlord submitted that the Tenant vacated the rental unit, did not attend the rental unit for the outgoing condition inspection report, and did not clean the rental unit before he left.

In evidence the Landlord provided photographs of articles left behind in the rental unit by the Tenant, a very dirty sink and a fridge with what appears to be mold in it.

The Landlord also claims for an administration fee of \$100.00. In the tenancy agreement the Landlord sets out they will charge the Tenant \$25.00 for late payment of rent, and an administration charge of \$25.00, "... if any deductions are required from the security deposit." It was explained to the Agent for the Landlord that this \$25.00 administration fee is not allowed under the Act or the non-refundable fees set out in the

regulation and this clause is void and unenforceable. It was also explained that even though the parties both agreed to this clause, under section 5 of the Act the parties may not contract outside of the Act or agreed to avoid it.

It was suggested that the \$100.00 fee requested was actually for four \$25.00 late payments of rent fees, which are allowed under the Act and Tenancy Agreement.

The Landlord also claims for \$100.00 to remove and dump the items left behind by the Tenant.

Lastly, the Landlord claims \$50.00 to replace the keys which were not returned by the Tenant.

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 Tenant. 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 took reasonable steps 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 Tenant breached section 26 of the Act, and the tenancy agreement, by failing to pay rent for February and March of 2014, and I award the Landlord **\$1,350.00** for this rent. I also allow the Landlord late rent fees for of \$25.00 for four months in the amount of **\$100.00**.

I find the Landlord had insufficient evidence to prove all of the cleaning costs, although I do find the Tenant did not clean the fridge or sink and allow the Landlord **\$100.00** for this cleaning, and dismiss the other cleaning claims due to insufficient evidence.

I allow the Landlord **\$100.00** to remove and dump the items left behind by the Tenant.

I dismiss the claim for \$50.00 for keys, as I find the Landlord failed to provide sufficient evidence to prove this loss in this amount, such as a receipt.

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.]

I find the Landlord has established the Tenant breached the Act and that the Landlord is entitled to compensation, and that the Landlord did mitigate the 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 **\$1,700.00** comprised of the above described amounts and the \$50.00 fee paid for this application.

I order that the Landlord retain the deposit and interest of **\$337.50** in partial satisfaction of the claim and I grant the Landlord an order under section 67 for the balance due of **\$1,362.50**.

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

Conclusion

The Landlord has proven that the Tenant breached the Act and tenancy agreement, and that the Landlord is entitled to compensation.

The Landlord may keep the security deposit in partial satisfaction of the claim and is granted a monetary order for the balance due of **\$1,362.50**

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: August 29, 2014

Residential Tenancy Branch

