



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Code 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 money owed or compensation for loss under the Act, and an order to retain the security deposit in partial satisfaction of the claim.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and 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 a monetary order for unpaid rent?

Is the landlord entitled to a monetary order for compensation for loss under the Act?

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 February 1, 2014 and was to expire on January 31, 2015. Rent in the amount of \$1,400.00 was payable on the first of each month. A security deposit of \$700.00 was paid by the tenant.

The parties agreed that the tenancy ended when the tenants failed to pay rent for March 2014, and the landlord received an order of possession and a monetary for unpaid rent for March 2014. The tenants vacated the rental premises on April 16, 2014.

The landlord claims as follows:

a.	Unpaid rent and utilities	\$1,630.00
b.	Clean up, hauling and disposal of garbage	\$ 100.00
c.	Loss of revenue for May, June, July 2014	\$4,200.00
d.	Lawn maintenance	\$ 100.00
e.	Filing fee	\$ 100.00
	Total claimed	\$6,130.00

Unpaid rent and utilities

The landlord testified that the tenants failed to pay utilities for the month of March that were due under the terms of the tenancy agreement. The landlord seeks to recover the amount of \$150.00.

The landlord testified that the tenants failed to pay rent owed for April 2014 and seeks to recover the amount of \$1,400.00. The landlord stated that as the tenants vacated the rental premises on April 16, 2014 that she has prorated the utilities and seeks to recover the amount of \$80.00.

The tenant's agent agreed utilities were not paid for the month of March 2014. The tenant's agent agreed that they did not pay rent or utilities owed for April 2014.

Clean up, hauling and disposal of garbage

The landlord testified that the tenants left garbage behind and included in that garbage was an old barbeque and propane tank. The landlord stated that it took her two hours to clean and remove the garbage and she had to use her vehicle and gas to dispose of the times. The landlord seeks compensation in the amount of \$100.00.

The tenant's agent agreed that items were left behind. The agent stated the tenant was to remove the garbage before he vacated, however, failed to do so. The agent agreed the amount claimed was reasonable.

Loss of revenue for May, June, July 2014

The landlord testified that the tenants were under a fixed term agreement, which was to expire January 31, 2015. However, the tenants breached the tenancy agreement when they failed to pay rent and were evicted from the premises. The landlord stated due to the breach of the tenancy agreement she seeks to recover loss of revenue for the month of May, June, and July 2014, in the amount of \$4,200.00.

The landlord testified that the tenants vacated the premises on April 16, 2014. The landlord stated that she advertised the rental unit for rent as soon as possible and renewed the advertisement on a monthly basis. The landlord stated that she was not able to find a new renter until September 2014.

The agent for the tenant stated that he does not dispute this portion of the landlord's claim.

Lawn maintenance

The landlord testified that had the tenants not breached the tenancy agreement she would not have incurred lawn maintenance fees as the tenants were responsible for

cutting and edging the grass. The landlord stated that she paid \$65.00 to have the grass cut twice and seeks compensation in the amount \$35.00 to recover her time for doing the grass edging. Filed in evidence are receipts for grass cuttings. The landlord seeks to recover the amount of \$100.00.

The tenant's agent testified that he does not dispute that portion of the landlord's claim.

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 and utilities

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.

In this case, the tenant's agent agreed utilities were not paid for March and April 2014 and agreed rent was not paid for April 2014. I find the tenant has breached the Act, when they failed to pay rent and utilities owed under the terms of the tenancy agreement and this action caused losses to the landlord. Therefore, I find the landlord is entitled to recover unpaid rent and utilities in the amount of **\$1,630.00**.

Clean up, hauling and disposal of garbage

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.

In this case, the tenant's agent agreed that there was garbage left behind in the rental unit and agreed that the amount the landlord seeks is reasonable. I find the tenant has breached the Act, when they failed to remove their garbage from the rental unit and this action caused losses to the landlord. Therefore, I find the landlord is entitled to compensation in the amount of **\$100.00**.

Loss of revenue for May, June, July 2014

In this case, the tenant's agent agreed that the landlord is entitled to recover loss of revenue for May, June and July 2014. Therefore, I find the landlord is entitled to recover loss of revenue in the amount of **\$4,200.00**.

Lawn maintenance

In this case, the tenant's agent agreed that the landlord is entitled to recover cost for lawn maintenance. Therefore, I find the landlord is entitled to recover lawn maintenance in the amount of **\$100.00**.

I find that the landlord has established a total monetary claim of **\$6,130.00** comprised of the above described amounts and the \$100.00 fee paid for this application.

I order that the landlord retain the security deposit of **\$700.00** in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of **\$5,430.00**.

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 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: October 15, 2014

Residential Tenancy Branch

