



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNR, MNDC, FF

Introduction

This hearing was convened in response to applications by the landlords and the tenants.

The landlords' application is seeking orders as follows:

1. For a monetary order for unpaid rent;
2. To keep all or part of the security deposit; and
3. To recover the cost of filing the application.

The tenants' application is seeking orders as follows:

1. Return all or part of the security deposit; and
2. To recover the cost of filing the application.

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

Are the landlords entitled to a monetary order for unpaid rent?

Are the landlords entitled to monetary compensation for damages?

Are the tenants entitled to a monetary order for money owed?

Is either party entitled to security deposit?

Is either party entitled to recover the cost of the file fee from the other party?

Background and Evidence

The parties entered into a fixed term tenancy which began on November 23, 2013 and was to expire on November 30, 2014. Rent in the amount of \$1,100.00 was payable on the first of each month. A security deposit of \$550.00 was paid by the tenants.

Landlords' application

At the outset of the hearing the landlords requested to amend their application by reducing the amount of their claim from \$4,950.00 to the amount of \$1,100.00, as the original amount claimed was for a projected loss of revenue and the actual loss was \$1,100.00.

The landlords claim as follows:

a.	Loss of revenue	\$1,100.00
b.	Filing fee	\$ 50.00
	Total claimed	\$1,150.00

The landlords testified that the tenants breached the fixed term agreement when they gave notice on May 4, 2014, to end the tenancy on June 30, 2014.

The landlords testified that they immediately advertised the premises for rent on three local websites; however, they only had three viewings for a monthly rental. The landlord stated because of that they advertised for short vacations stays and were able to recover the amount of \$2,636.00 for the months of July and August 2014. The landlord stated that in order to further reduce their loss; they rented to a student and were able to collect rent in the total amount of \$2,475.000 for the months of September, October and November 2014.

The landlords testified that in order to do the short vacations stays they had to purchase furniture and that they are required to pay for the food for their student. The landlords stated that these are costs they would not have incurred had had the tenants not breached the fixed term agreement. The landlord seeks to recover the total amount of \$1,100.00.

The tenants testified that they had one of their friends call the landlords to state that they were interested in renting the basement suite and they were told that the basement suite was unavailable as it had been booked as a vacation rental.

Tenants' application

The tenants claim as follows:

a.	Return of rent	\$ 421.66
b.	Return of Security deposit	\$ 550.00
c.	Filing fee	\$ 50.00
	Total claimed	\$1,021.66

The tenants testified that they paid a prorated rent when they moved into the rental unit a week early and because of that they should be entitled to a prorated rent for the month of June 2014, as they vacated the premises on June 19th and were not residing in the premises for eleven days. The tenant seeks to recover rent in the amount of \$421.66.

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 each party has the burden of proof to prove their respective claim.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

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.

Landlords' application

Section 45 of the Residential Tenancy Act states:

45 (2) A tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that

(a) is not earlier than one month after the date the landlord receives the notice,

(b) is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and

(c) is the day before the day in the month, or in the other period on which the tenancy is based,

In this case, the evidence of the landlords' was that the tenants breached the fixed term tenancy by providing notice to end the tenancy on May 4, 2014, with an effective vacancy date of June 30, 2014. However, under the Act the tenants were not entitled to give notice to end the tenancy prior to the date specified in the tenancy agreement. I find the tenants have breach section 45(2) of the Act as the earliest date they could have legally ended the tenancy was November 30, 2014 as stated in the tenancy agreement.

However, under section 7 of the Act, the party who claims compensation for loss that results from the non-complying party must do whatever is reasonable to minimize the loss. The duty to minimize the loss begins when the party entitled to claim damages becomes aware that damages are occurring

Although the tenants had a friend call the landlords claiming to be potential renter, and they were told that the premises was rented as a vacation rental. I find that is supported by the landlords' evidence that they rented the premises as a short vacation stays to reduce the loss when they only had three viewings as a monthly rental.

In this case, the landlords were able to recover the amount of \$2,636.00 for July and August 2014, exceeding rent owed by the tenants for these two months. Further the evidence of the landlords was that they also recovered the amount of \$2,475.00, by renting to a student for the following three months. I find the landlords made reasonable efforts to minimize the loss.

In this case, the landlords collected rent in the total amount of \$5,111.00 and the amount of rent payable by the tenants under the fixed term agreement was \$5,500.00 leaving a difference of \$389.00, owed by the tenants.

While I accept the landlords had additional expenses for purchasing furniture for the short vacation stays or by having to pay for food from their student, I find that was a business choice they made. Further the landlords have not suffered a loss due to the furniture as they have that furniture in their possession for future use or disposal.

Therefore, I find the landlords are entitled to recover the difference between the rent collected and the rent due by the tenants in the amount of **\$389.00**.

I find that the landlords have established a total monetary claim of **\$439.00** comprised of the above described amounts and the \$50.00 fee paid for this application.

I order that the landlords retain the amount of **\$439.00** from the tenant's security deposit in full satisfaction of the claim and I grant the tenants an order under section 67 for the balance due of **\$111.00**.

Should the landlords fail to return the above amount to the tenants, this order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

Tenants' application

In this case, I have found the tenants breached the Act, when they ended the tenancy earlier than the Act and tenancy agreement allowed. In this circumstance the tenant gave notice to end the tenancy effective June 30, 2014 and vacated the premises earlier on June 19, 2014. I find the tenants have failed to prove a violation of the Act, by the landlord. Therefore, I dismiss this portion of the tenants' claim.

As the tenants application is dismissed and the return of the security deposit was dealt with in the landlords' application and the landlords' application was filed first. I find the tenants are not entitled to recover the filing fee from the landlord.

Conclusion

The landlords are granted a monetary order and may keep a portion of the security deposit in full satisfaction of the claim.

Although the tenants were not successful with their application, the tenants are entitled to a formal order for the balance due of their security deposit.

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 27, 2014

Residential Tenancy Branch

