



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding DR. BLANKA JURENKA INC.
and [tenant name suppressed to protect privacy]

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 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 on June 30, 2014, the tenants wrote their forward address on a scrap piece of paper. Filed in evidence is a copy marked "3d". The landlord stated the tenant further confirmed their forwarding address by email on July 10, 2014. Filed in evidence is a copy of the email marked "2".

The landlord testified on July 17, 2014, the Application for Dispute Resolution and Notice of Hearing were sent by registered mail to the forwarding address provided by the tenants. Filed in evidence are copies of the Canada posts tracking numbers for each respondent.

Base on the above, I find the tenants have been served in accordance with the Act. Section 90 of the Act determines that a document served in this manner is deemed to have been served five days later.

The landlord appeared gave affirmed 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.

Issues to be Decided

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

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 tenancy began on May 1, 2013. Rent in the amount of \$2,950.00 was payable on the first of each month. A security deposit of \$1,475.00 and a pet damage deposit of \$737.50 were paid by the tenants. The tenants vacated the rental premise on June 30, 2014.

A move-in and move-out condition inspection report was completed. Filed in evidence is a copy of the condition inspection report, with the final inspection completed on July 12, 2014.

The landlord claims as follows:

a.	Loss of rent for July 2014	\$ 2,950.00
b.	Carpet cleaning	\$ 99.75
c.	Unreturned keys and fobs	\$ 282.53
d.	Filing fee	\$ 50.00
	Total claimed	\$ 3,382.28

Loss of rent for July 2014

The landlord testified that on June 24, 2014, they received an email from the tenants to end their tenancy with an effective vacancy date of July 1, 2014. The landlord stated they responded to the tenants' email and the tenants were informed that they were expected to pay rent for July 2014, as notice was well under one month.

The landlord testified that they did not receive any response from the tenants, until they were informed by a neighbor that the tenants were vacating the premises on June 30, 2014. The landlord seeks to recover loss of rent for July 2014, in the amount of \$2,950.00. Filed in evidence is a copy of the email thread.

Carpet cleaning

The landlord testified that the tenants had pets, and clause 23 of the tenancy agreement required the tenants to have the carpets professionally cleaned at the end of the tenancy.

The landlord testified that the tenants did not have the carpets cleaned as required and the tenants disagreed to cleaning the rugs in the move-out condition inspection report.

Filed in evidence is a copy of the move-out condition inspection report, in the report the tenants write,

“I do not agree with the cleaning of the rugs as I am not obligated nor agree to.”

[Reproduced as written]

The landlord seeks to recover the cost of having the carpets cleaned in the amount of \$99.75. Filed in evidence is a receipt for carpet cleaning.

Unreturned keys and fobs

The landlord testified that at the end of the tenancy, the tenants failed to return the keys to the: rental unit, mail box and the fobs to the garage door. The landlord stated as a result, they were required to have the locks changed and fobs replaced. The landlord seeks to recover the amount of \$282.53. Filed in evidence are receipts for the above keys.

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.

Loss of rent for rent for July 2014

Section 45 of the Residential Tenancy Act states: (month to month)

45 (1) A tenant may end a periodic 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, and

(b) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement

In this case, the evidence of the landlord was that the tenants did not give notice until June 24, 2014 to end the tenancy on July 1, 2014. Under section 45(1) of the Act the tenants were required to provide the landlord with at least one month notice to end the tenancy. I find that the tenants have breached the Act as the earliest date they could have legally ended the tenancy was July 31, 2014.

As a result of the tenants not complying with the terms of the tenancy agreement or the Act the landlord suffered a loss of rent for July 2014; the landlord is entitled to an amount sufficient to put the landlord in the same position as if the tenants had not breached the tenancy agreement or Act. This includes compensating the landlord for any loss of rent up to the earliest time that the tenants could have legally ended the tenancy. Therefore, I find the landlord is entitled to recover loss of rent for July 2014, in the amount of **\$2,950.00**

Carpet cleaning

Under section 37 of the Act, the tenants are required to return the rental unit to the landlord reasonably clean and undamaged, except for reasonable wear and tear. Normal wear and tear does not constitute damage. Normal wear and tear refers to the natural deterioration of an item due to reasonable use and the aging process. A tenant is responsible for damage they may cause by their actions or neglect including actions of their guests or pets.

Under the Residential Policy Guideline 1, which clarifies the rights and responsibilities of the parties for the premises under the Act, the tenants are generally expected to clean the carpets if vacating after a tenancy of one year and must clean the carpets regardless of time if they had pets.

I accept the undisputed evidence of the landlord that the tenants had a pet and failed to clean the carpet as required by the Act and tenancy agreement. As a result, I find the tenants have breached section 37 of the Act, when they failed to clean the carpets. Therefore, I find the landlord is entitled to recover the cost of having the carpets cleaned in the amount of **\$99.75**.

Unreturned keys and fobs

I accept the undisputed evidence of the landlord that the tenants failed to return the keys at the end of the tenancy on June 30, 2014. The move-in condition inspection report signed by the parties on April 27, 2013, indicated 6 key and 2 other devices were given to the tenants at the start of the tenancy. The move-out condition inspection report signed on July 12, 2014, does not show any of the keys or fobs being returned.

I find the tenants have breached section 37, when they failed to return all keys and devices that gave access to the rental unit at the end of the tenancy. Therefore, I find

the landlord is entitled to recover the cost to replace the locks, key and fobs in the total amount of **\$282.53**.

I find that the landlord has established a total monetary claim of **\$3,382.28** comprised of the above described amounts and the \$50.00 fee paid for this application.

I order that the landlord retain the security deposit of **\$1,475.00** and the pet damage deposit of **\$737. 50** in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of **\$1,169.78**.

Although I have granted the landlord a monetary order in the above amount, the landlord stated at the conclusion of the hearing, that they will not be enforcing the order and waive their rights to a formal order being issued.

Conclusion

The landlord is granted a monetary order and may keep the security deposit and pet damage deposit in partial satisfaction of the claim. Although the landlord is entitled to a formal order for the balance due, the landlord waived their rights to a formal order being issued.

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: December 15, 2014

Residential Tenancy Branch

