



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNR, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord for a monetary order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, for an order to retain the security deposit in partial satisfaction of the claim and to recover the filing fee from the tenants.

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.

The parties confirmed receipt of all evidence submissions and there were no disputes in relation to review of the evidence submissions

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 monetary compensation for money owed or 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 June 1, 2014 and was to expire on May 30, 2015. Rent in the amount of \$985.00 was payable on the first of each month. A security deposit of \$492.50 was paid by the tenants.

A move-in and move-out condition inspection report was not completed.

The landlord claims as follows:

a.	Loss of rent for August 2014	\$ 985.00
b.	Carpet cleaning	\$ 225.00
c.	Filing fee	\$ 50.00
	Total claimed	\$1,260.00

Loss of rent for August 2014

The landlord testified that the tenants breached the fixed term tenancy agreement by giving notice to end the tenancy on July 20, 2014, with an effective vacancy date of July 31, 2014. The landlord stated that as soon as she was given notice to end the tenancy by the tenants she immediately advertised the premise for rent. The landlord stated that she was unable to find a new renter for August 2014. The landlord stated that she was able to find a new renter for September 2014. The landlord seeks to recover the loss of rent for August 2014, in the amount of \$985.00.

The tenants testified that when they entered into the fixed term agreement the landlord failed to reveal the fact that the property was being used to grow commercial marihuana.

The tenants testified that had the landlord disclosed this information when they viewed the rental property they would not have entered into the tenancy agreement. The male tenant stated that due to his position as a sheriff he does not want to be associated with any marihuana grow operation.

The male tenant testified that he has seen people on the property that he has dealt with during the course of his employment and does not feel his family is safe.

The tenants testified that there had been two incidents with employees of the grow operation, and in each incident the employees were hostile by yelling.

The landlord responded that she has a legal license to cultivate marihuana and is not obligated to disclose that information to anyone and especially to someone that works at the courthouse.

Carpet cleaning

The landlord testified that the tenants left the carpets dirty at the end of the tenancy. The landlord stated that she had paid the amount of \$225.00 to clean the carpets. Filed in evidence are photographs of the carpets. The landlord failed to provide a copy of the receipt.

The tenants testified the landlord did not complete a move-in or move-out condition inspection report. The tenants stated that the carpets were not clean when they moved into the rental unit and the carpets were in the same condition when they vacated.

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 as the burden of proof to prove their 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.

Loss of rent for August 2014

In this case, the parties agreed a fixed term tenancy agreement was signed.

The evidence of the tenants was that they would not have entered into the residential tenancy agreement with the landlord had the landlord disclosed that the property they

were renting was also being used as a commercial marihuana grow facility. The evidence of the landlord was that she was under no obligation to disclose any information.

I find the landlord's position unreasonable. Although the commercial marihuana facility is said to be licensed, I find failing to disclose this information to the tenants was a misrepresentation of the premises, as the tenants would not have entered into a tenancy agreement had the facility been disclosed to them prior to signing the agreement.

When a tenant enters into a residential tenancy agreement, there is a reasonable expectation that the property is used for residential use. I find the tenants had the right to know what business is being carried out on the property where they will be living, in order to consider all the material facts that may have an impact on their family, such as health, safety or whether there could be a possible impact on employment, such as in this case the male tenant is a sheriff. I find the tenants had the right to end a tenancy due to the misrepresentation made by the landlord. I find the tenancy agreement signed by the parties is void and has no force or effect. Therefore, I find the landlord is not entitled to loss of rent for August 2014.

Carpet cleaning

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.

The evidence of the landlord was the tenants left the carpets dirty. The evidence of the tenants was that the carpets were not clean when they moved into the rental unit and were in the same condition when they vacated.

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.

As the landlord did not complete a move-in condition inspection report with the tenants, and the tenants had not lived in the premises for one year. I find the landlord has failed to prove the carpets were left dirty by the tenants. Therefore, I find the landlord is not entitled to compensation for carpet cleaning.

As the landlord was not successful with their application, the landlord is not entitled to recover the filing fee from the tenants.

Under the Residential Policy Guideline #17, return or retention of security deposit through arbitration, the Arbitrator will order the return of the deposit or the balance of the deposit, whether or not the tenant has applied for its return.

As I have dismissed the landlord's application and the landlord has no authority under the Act, to retain any portion of the tenants' security deposit. I find the tenants are entitled to the return of their security deposit in the amount of **\$492.50**. The tenants are granted a formal order pursuant to section 67 of the Act.

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

Conclusion

The landlord's application is dismissed.

The tenants are granted a monetary order for the return of the 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: January 26, 2015

Residential Tenancy Branch

