



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNR MNDC MNSD FF

Introduction:

This hearing dealt with an application by the landlord pursuant to the *Residential Tenancy Act* for orders as follows:

- a) A monetary order pursuant to Sections 46 and 67;
- b) An Order to retain the security deposit pursuant to Section 38; and
- d) An order to recover the filing fee pursuant to Section 72.

SERVICE:

Both parties attended and the tenants agreed they received the Notice to End Tenancy posted on the door and the Application for Dispute Resolution by registered mail. I find that the tenant was properly served with the documents according to sections 88 and 89 of the Act.

Issue(s) to be Decided:

The tenant was issued a Notice to End Tenancy dated October 2, 2014. The tenant has vacated so an Order of Possession is not requested. The issue is whether the landlord has proved on a balance of probabilities that there are rental arrears and damages and the amount owed?

Background and Evidence:

Both parties attended and were given opportunity to be heard, to present evidence and to make submissions. The undisputed evidence is that the tenancy commenced in November 1, 2013 on a fixed term terminating on September 1, 2014, rent was \$1550 a month on the lease and a security deposit of \$775 was paid. The landlord states it then became a month to month tenancy and the tenants were paying rent of \$2025 including utilities and cable since August 2014 when the third tenant joined the first two. A text exchange on this was provided as evidence of the new verbal agreement; I note the original lease did not include utilities in the rent of \$1550 a month. It is undisputed that the tenant gave Notice to end their tenancy by text on September 19, 2014 stating they

would vacate in October and pay October's rent. They did not vacate, did not pay rent for October and did not return keys. The landlord claims as follows:

1. \$2025: rent owed for October 2014
2. \$366.49 to get a flatbed trailer to take left behind garbage to dump. The tenant acknowledged they could not get rid of some stuff.
3. \$100 for repair and paint of walls. The tenants said there were no holes but agreed they used something on one wall which removed the paint when they tried to get it off.
4. \$240 for cleaning of unit (12 hours x \$20 hr.) The tenant said they left the place swept and neat, although they left some garbage and admitted they left food in the refrigerator. They also agreed they left stuff outside.
5. \$60.36 to rent a pressure washer to clean the entry way which was dirty and smelly from rotting garbage. The tenant said they do not know about that.
6. \$99.75 to recut keys. The tenants agreed they did not return the keys.

The tenants said they left because of problems with a non working sink and they dispute the rent increase. However, they said they have brought an application due to be heard in August 2015 to claim against the landlord compensation of \$5,000 for these and other items. Therefore, I declined to hear evidence on these points.

In evidence are text messages, photographs, a tenancy agreement dated October 20, 2013, a Notice to End Tenancy for unpaid rent and invoices to support the claim of the landlord.

On the basis of the documentary and solemnly sworn evidence presented at the hearing, a decision has been reached.

Analysis

Monetary Order

I find that there are rental arrears (including utilities) in the amount of \$2025 representing rental arrears for October 2014. Although the tenant claimed in the hearing that this was an illegal rent increase charged for an extra occupant, I find their original written fixed term lease had rent at \$1550 a month but did not include utilities. The verbal agreement confirmed by text in September 5, 2014 for rent of \$2025 was a new arrangement that includes utilities. I note section 40 of the Act addresses rent increases and an extra occupant but I decline to make any finding on this point raised by the tenant as there is insufficient evidence of what is included or not included in the new rent. However, I find the fixed term lease had expired and the weight of the evidence is that there was a new month to month agreement entered by the parties for rent of \$2025 a month.

I find the tenants gave insufficient notice on September 19, 2014 to end their tenancy pursuant to section 45 of the Act which requires them to give one full month's notice. Any notice given in September would not be effective until October 31, 2014. I find the tenants appeared to understand this when they promised to pay the landlord for October's rent but they did not do so. I find the landlord entitled to recover \$2025 in rent arrears.

On the damage claim, the landlord has the onus of proving on a balance of probabilities that the tenants damaged the unit, that it was beyond reasonable wear and tear and the cost of curing the damage. I find the landlord's evidence credible as it is well supported by invoices, photographs and the oral evidence of the parties in the hearing. I find the landlord entitled to recover \$366.49 for the cost of a trailer to haul garbage to the dump (the tenant admitted they could not get rid of stuff). I find him entitled to recover \$100 for repairs and paint; the tenants admitted they had put something on the wall that damaged it when they tried to remove it. I find the photograph illustrates the damage was significant and I find the landlord's charge for repair is reasonable.

Although the tenants contended they left the unit neat and swept, I find the photographs of the landlord persuasive that they left a lot of items to be cleaned, garbage and recycling. The tenants did agree, when questioned, that they left food in the refrigerator as pictured; I find this is inconsistent with leaving a clean unit. They also noted they left garbage behind. I find the landlord's charge of \$240 for 12 hours of cleaning is reasonable and I find him entitled to recover this amount. I find it likely that the amount of garbage left did stain or create smells in the entry way and a pressure washer was needed. I find him entitled to recover \$60.36 for the rental. I find him entitled to also recover \$99.75 for cutting keys as I find the tenants' evidence is that they never did return the keys.

Conclusion:

I find the landlord is entitled to a monetary order as calculated below. I find the landlord is entitled to retain the security deposit to offset the rental amount owing and to recover filing fees paid for this application.

Calculation of Monetary Award:

Rent arrears October 2014	2025.00
Trailer to haul garbage	366.49
Wall repair and paint	100.00
Cleaning	240.00

Pressure Washer rental	60.36
Key cutting	99.75
Filing fee	50.00
Less security deposit (no interest 2013-15)	-775.00
Total Monetary Order to Landlord	2166.60

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: March 11, 2015

Residential Tenancy Branch

