



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MNSD, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord filed under the Residential Tenancy Act (the "Act"), for a monetary order for unpaid rent, for money owed or compensation for damage or loss under the Act.

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 the Application for Dispute Resolution and Notice of Hearing were served on each of the tenants in person on August 20, 2014, which was witnessed.

I find that the tenants have been duly served in accordance with the Act.

The landlord appeared gave 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 unpaid rent?
Is the landlord entitled to monetary compensation for damages?

Background and Evidence

The tenancy began on March 1, 2013. Rent in the amount of \$1,350.00 was payable on the first of each month. The tenants paid a security deposit of \$675.00. The tenancy ended on March 28, 2014.

The landlord claims as follows:

a.	Unpaid rent for March 2014	\$1,350.00
b.	Damages to the property	\$2,985.84

Total claimed	\$4,335.84
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Unpaid rent for March 2014

The landlord testified that on March 9, 2014, she met with the tenant AR, and AR informed them that they were ending the tenancy effective March 31, 2014, due to the tenants' relationship ending. The landlord stated AR told them that they had no money to pay the rent that was owed for March 2014. The landlord seeks to recover unpaid rent for March 2014, in the amount of \$1,350.00.

Damages to the property

The landlord testified that at the end of the tenancy the tenants left a large amount of garbage outside in the barn and under the deck. The landlord stated that she had to take two full loads of garbage to the dump and the cost to dispose of the garbage was \$67.25. Filed in evidence is a receipt and photographs of the garbage which support the landlord testimony.

The landlord testified that the tenants' horses broke a fence and the tenants made the repair by placing two fence posts behind the existing posts. However, by moving the fence post behind the original ones it exposed part of the septic field and the horses damaged the septic pipe. The landlord stated the cost to make the repair was \$5.22. Filed in evidence is a receipt.

The landlord testified that the tenants did not clean up after their horses and there was an area of approximately 40 feet by 12 feet that contained approximately 2 feet high of horse manure and wet hay. The landlord stated that in order to clean the area she had to rent a machine. The landlord seeks to recover the cost of the rental in the amount of \$2,877.00. Filed in evidence is a receipt and are photographs.

The landlord testified that the tenants also broke 4 pencil post fence posts and the cost to replace the fence posts was \$38.90. Filed in evidence is a receipt.

The landlord testified that when the tenant AR vacated the premises, they apologized for leaving such a mess and told them to sell the two bicycles that they were leaving behind. The landlord stated she was able to sell the bicycles for \$350.00 which should be applied to the outstanding amount and also was able to recover another \$40.00 for a horse blanket that they were able to salvage.

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, 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 for March 2014

Rules about payment and non-payment of rent are defined in Part 2 of the Act.

Rules about payment and non-payment of rent

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. ...

I accept the undisputed testimony of the landlord, that the tenants did not pay any rent for March 2014. I find the tenants have breached section 26 of the Act when they failed to pay rent when due under the tenancy agreement and this has caused losses to the landlord. Therefore, I find the landlord is entitled to recover unpaid rent in the amount of **\$1,350.00**.

Damages to the property

How to leave the rental unit at the end of the tenancy is defined in Part 2 of the Act.

Leaving the rental unit at the end of a tenancy

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.

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.

I accept the undisputed testimony of the landlord that the tenants left garbage behind, did not remove the horse manure or wet hay, did not repair the pipe to the damage septic field and did not repair the 4 broken pencil fence posts. The landlord claim is supported by receipts and

photographs. I find the tenants have breached the Act, when they failed to clean or make the necessary repairs. Therefore, I find the landlord is entitled to recover the cost of cleaning and repairs in the amount of **\$2,985.84**

I find that the landlord has established a total monetary claim of **\$4,385.84** comprised of the above described amounts and the \$50.00 fee paid for this application. That amount will be reduced by \$390.00, as that was an amount the landlord was able to salvage from items left behind, leaving a balance owing of **\$3,995.84**.

I order that the landlord retain the security deposit of **\$675.00** in partial satisfaction of the claim and I grant the landlord an order under section 67 of the Act for the balance due of **\$3,320.84**.

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: March 13, 2015

Residential Tenancy Branch

