



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MNSD, MND, 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 damages to the unit and for an order to retain the security deposit in partial satisfaction of the claim.

The landlord’s agent 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’s agent testified the Application for Dispute Resolution and Notice of Hearing were sent by registered mail on August 22, 2014. Canada post tracking numbers were provided as evidence.

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

The landlord’s agent 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?

Is the landlord entitled to retain the security deposit in partial satisfaction of the claim?

Background and Evidence

The tenancy began on April 25, 2009. Rent in the amount of \$871.72 was payable on the first of each month. The tenants paid a security deposit of \$417.50. The tenancy ended on July 31, 2014.

A move-in and move-out condition inspection report was completed.

The landlord claims as follows:

a.	Loss of rent for August 2014	\$ 871.72
b.	Cleaning of rental unit and removal of furniture	\$ 315.00
c.	Filing fee	\$ 50.00
	Total claimed	\$1,236.72

Loss of rent for August 2014

The landlord's agent testified that on July 2, 2014, they received a letter from the tenants to end the tenancy effective July 31, 2014. The agent stated that the tenants were informed that they did not provide sufficient notice to end the tenancy and they would be liable for any loss of rent for August 2014, if the unit was not re-rented.

The landlord's agent testified that on July 2, 2014, there was already an advertisement posted on the local popular websites as they have a continuous advertisement posted. The agent stated although they had a few showings there was no renter available to take the rental unit for August 1, 2014. The landlord seeks to recover loss of rent for August in the amount of \$871.72.

Cleaning of rental unit and removal of furniture

The landlord's agent testified that the male tenant participated in the move-out condition inspection. The agent stated that the male tenant agreed to the amounts claimed for cleaning (\$180.00) and furniture removal (\$135.00); however, the male tenant did not feel he should be responsible for any of the cost as he had left the rental unit prior to the female tenant. Filed in evidence is a copy of the move-out condition inspection report.

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 August 2014

How to end a tenancy is defined in Part 4 of the Act.

Tenant's notice

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's agent was that the tenants gave notice to end the tenancy on July 2, 2014, with an effective vacancy date of July 31, 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 August 31, 2014.

Since the tenants failed to comply with the Act by not given the landlord sufficient notice to end the tenancy. The landlord is entitled to an amount sufficient to put the landlord in the same position as if the tenants had not breached the 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.

However, under section 7(2) 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.

In this case, the evidence of the landlord's agent was that they already had an existing advertisement posted on several popular websites and were unable to find a new renter for August 2014, I find the landlord made reasonable efforts to minimize the loss. Therefore, I find the landlord is entitled to recover loss of rent for August 2014, in the amount of **\$871.72**.

Cleaning of rental unit and removal of furniture

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.

In this case, the move-out condition inspection supports that the rental unit was left dirty and that the tenant's left furniture behind. The report also confirms the male tenant agreed with the cost of cleaning and the cost of furniture removal.

Although the male tenant felt the cost should be the responsibility of the female tenant as he had left at the rental unit at the beginning of July 2014. That is a matter for the tenants to resolve between themselves as this is joint tenancy and both parties are equally responsible for any breaches that occur during the tenancy.

Therefore, I find the tenants have breached section 37(2) of the Act, when they failed to clean the rental unit, when they failed to remove furniture items from the rental unit and this caused losses to the landlord. Therefore, I find the landlord is entitled to compensation at the agreed upon amount for cleaning and furniture disposal in the total amount of **\$315.00**.

I find that the landlord has established a total monetary claim of **\$1,236.72** 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 **\$417.50** in partial satisfaction of the claim and I grant the landlord an order under section 67 of the Act for the balance due of **\$819.22**.

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 17, 2015

Residential Tenancy Branch

