



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MNDC, 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 under the Act, and for an order to retain the security deposit and pet damage deposit (the “Deposits”) in partial satisfaction of the claim.

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. The landlord objected to the tenants’ evidence being reviewed as he did not receive their evidence in accordance with the Residential Tenancy Branch Rules of Procedures (the “Rules”) and they were unable to properly review the evidence and file evidence to the contrary.

In this case, the landlord’s application was filed on September 3, 2014 and on November 10, 2014, the landlord filed evidence in support of their claim. On March 16, 2015, the tenants’ filed their evidence, which is the last day possible under Rules; however, it was not served on the landlord that day.

Although the landlord was given the opportunity for an adjournment to review and submit further evidence, the landlord objected to an adjournment and requested that the tenants’ evidence be excluded, I find that request to be appropriate in this case, as the tenants had sufficient notice of the hearing and the evidence submitted was available to be filed at an early date. Therefore, I find any further delay would be administratively unfair to the landlord. Therefore, the tenants’ evidence was excluded.

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.

Preliminary matters

At the outset of the hearing the landlord requested to amend their application to remove their claim for unpaid utilities and damages to the rental property.

The landlord stated that they further seek to amend their application as they were claiming for 3 months of loss rent. However, they were able to rent the unit and seek to recover one month of loss rent.

Since the amendment the landlord has requested is substantially reducing their claim. I find the amendment is not prejudicial to the tenants. Therefore, I have amended the landlord's application.

Issues to be Decided

Is the landlord entitled to a monetary order for unpaid rent?

Is the landlord entitled to retail all or part of the Deposits?

Background and Evidence

The parties agreed that they entered into a fixed term tenancy which began on May 1, 2014, and was to expire on April 30, 2015. Rent in the amount of \$1,495.00 was payable on the first of each month. The tenants paid a security deposit of \$747.50 and a pet damage deposit of \$747.50. The tenancy ended on August 31, 2015.

The parties agreed that the landlord was authorized to retain the security deposit and pet damage deposit as compensation for September 2014, rent.

The parties agreed a move-in and move-out condition inspection report was completed.

The landlord claims as follows:

a.	Loss of rent for October 2014	\$1,495.00
b.	Filing fee	\$ 50.00
	Total claimed	\$1,545.00

The landlord testified that the tenants breached the fixed term tenancy agreement by proving notice to end the tenancy on August 26, 2014, with and effective date of August 31, 2014.

The landlord testified that although the tenants provided compensation by agreeing that their Deposits could be applied to September 2014, rent, they were still unable to find a new renter for the month of October 2014.

The landlord testified that they immediately advertised the rental unit on several popular websites. The rent was initially posted at \$1,550.00 as that was the amount of rent that was originally posted for the rental unit when the tenants entered into their contract. The landlord stated they are always willing to negotiate a lower rent. The landlord stated that on October 25, 2014, they further mitigate the loss as they were able to find a new renter for the balance of the tenants fixed term agreement at a lower rent of \$1,450.00, which is a difference of \$45.00 less each month.

The tenants testified that they ended the tenancy as they believed the landlord breached a material term of the tenancy agreement. The tenants stated that the landlord had agreed verbally to build rear stairs and there were also other problems with the rental unit, such as a limited sound barrier.

The tenants testified that they believe the landlord failed to mitigate their loss. The tenants stated that when the landlord posted advertisements the rent for the unit was listed at a higher amount than what they were obligated to pay under their tenancy agreement.

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.

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

Tenant's notice

45 (2) A tenant may end a fixed term 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,

(b) is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and

(c) is the day before the day in the month, or in the other period on which the tenancy is based,

...

*(3) If a landlord has failed to comply with a material term of the tenancy agreement or, in relation to an assisted or supported living tenancy, of the service agreement, and has **not corrected the situation within a reasonable period after the tenant gives written notice of the failure**, the tenant may end the tenancy effective on a date that is after the date the landlord receives the notice.*

In this case, the tenants alleged the landlord breached a material term of the tenancy agreement. A material term is a term that the parties both agree is so important that the most trivial breach of that term gives the other party the right to end the agreement.

I have reviewed the tenancy agreement and the move-in condition inspection report filed in evidenced. Attached to the tenancy agreement is an addendum there is no reference to rear stairs being built. Further, the move-in condition inspection report does not indicate that there were any repairs to be made at the start of the tenancy. Although the parties made have had verbal discussion about stairs being built, it is not a material term of the tenancy agreement.

Further, even if I accepted the stairs were a material term, which I do not, the tenants did not comply with section 45(3) of the Act, by giving the landlord written notice of what they alleged to be a breach of a material term of the tenancy agreement and then providing the landlord with a reasonable amount of time to correct the situation. Rather the tenants gave the landlord five (5) days' notice that they were ending the tenancy on August 31, 2014.

I find the tenants have failed to prove that the landlord breached a material term of the tenancy agreement. I find the tenants breached the Act, when they gave notice to end

the tenancy effective August 31, 2014, as the earliest date they were legally entitled to end their tenancy was April 30, 2015, as stated in their tenancy agreement.

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 was that the rental unit was immediately advertised on several popular websites. Although rent was increased initially by \$55.00, I do not find that was a significant amount that deterred potential renters, and in fact the landlord reduced the rent to a lower amount than what the tenants were paying in their agreement to mitigate the loss.

I find the landlord made reasonable efforts to minimize the loss. Therefore, I find the landlord is entitled to recover unpaid rent for October 2014, in the amount of **\$1,495.00**.

I find that the landlord has established a total monetary claim of **\$1,545.00** comprised of the above described amount and the \$50.00 fee paid for this application. I grant the landlord an order under section 67 of the Act. 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 in the above noted amount.

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 25, 2015

Residential Tenancy Branch

