



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNR, MNDC, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord for a monetary order for unpaid rent, for damages to the unit and 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.

Preliminary matter

The tenant confirmed receipt of the landlord’s evidence. The tenant indicated that although they provided a copy of their evidence to the Residential Tenancy Branch they did not provide a copy of their evidence to the landlord.

As the landlord was not served with the tenant’s evidence in accordance with the rules of procedure, I find it would be administratively unfair to allow the tenant’s evidence to be reviewed at this hearing. Therefore, the tenant’s 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.

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 Deposits in partial satisfaction of the claim?

Background and Evidence

The parties entered into a fixed term tenancy, which began on November 1, 2013 and was to expire on April 30, 2014, the tenancy continued at the end of the fixed term. Rent in the amount of \$1,450.00 was payable on the first of each month. A security deposit of \$725.00 and a pet damage deposit of \$725.00 were paid by the tenant.

The landlord claims as follows:

a.	Loss of rent for September 2014	\$1,450.00
b.	Cleaning costs	\$ 150.00
c.	Filing fee	\$ 50.00
	Total claimed	\$1,650.00

Loss of rent for September 2014

The landlord testified that on July 28, 2014, the parties entered into a mutual agreement to end the tenancy effective on September 30, 2014. The landlord stated that the tenant mentioned that they might move out of the rental unit earlier; however, they did not receive any written notice. The landlord stated on August 20, 2014, they wrote a letter to the tenant indicated that they had not received notice and it was understood that the tenancy would end on September 30, 2014, as agreed to in the mutual agreement to end tenancy. Filed in evidence are copies of the mutual agreement to end the tenancy and letter dated August 20, 2014.

The landlord testified that it came to their attention on September 1, 2014, that the tenant was moving from the rental premises without any notice to end the tenancy earlier than what they agreed upon.

The landlord testified that as soon as the tenant vacated the premises they started to advertise the rental unit for rent. The landlord stated that a large for rent sign was placed on the property and they placed advertisements on local popular websites. The landlord stated despite their effort they were unable to find a new renter for any portion of September 2014. The landlord seeks to recover loss of rent in the amount of \$1,450.00.

The tenant testified that when they returned home from their vacation the landlord phoned them that they were coming by the rental unit to have them sign a mutual agreement to end the tenancy as they needed the agreement for the bank. The tenant stated that they were surprised by this, as they had planned to live in the rental unit for a longer period. However, they signed the agreement to end the tenancy effective on September 30, 2014.

The tenant testified that because they were given two month's notice to vacate the premises, they were informed they could give the landlord ten days' notice to vacate. The tenant stated they provided an email on August 11, 2014, to end the tenancy at the end of August 2014.

Cleaning costs

The landlord testified that the tenant did not leave the rental unit really clean as the stove, refrigerator and floor required additional cleaning. The landlord stated that there were also six light bulbs that needed to be replaced. The landlord stated that the rental unit was also a little smelly from the tenant's cat. The landlord seeks to recover the amount \$150.00.

The tenant testified that they paid to have the rental unit cleaned. The tenant stated that the previous tenants had 2 dogs and cats. The tenant stated that they have an older cat; however, the cat is very clean and not smelly. The tenant stated that they left the rental unit clean at the end of the tenancy.

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.

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 September 2014

Section 45 of the Residential Tenancy Act states:

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

On July 28, 2014, the parties entered into a mutual agreement to end the tenancy effective September 30, 2014.

Even if I accept the tenant gave 10 days' notice to end the tenancy early, section 50 of the Act does not apply to this case, as the parties entered into a mutual agreement to end the tenancy. The landlord did not give notice under section 49 of the Act and the tenant did not have the right to use this portion of the Act.

Therefore, I find the tenant was required to provide the landlord with at least one month notice to end the tenancy. I find that the tenant has breached the Act as the earliest date they could have legally ended the tenancy was September 30, 2014, even if I accept notice was given on August 11, 2014.

Because of the tenant not complying with the Act the landlord suffered a loss of rent for September 2014, the landlord is entitled to an amount sufficient to put the landlord in the same position as if the tenant had not breached the tenancy agreement or Act. This includes compensating the landlord for any loss of rent up to the earliest time that the tenant could have legally ended the tenancy, which was September 30, 2014.

However, under section 7 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 they immediately started to advertise the rental unit, by posting a sign on the property and posting advertisements on local popular websites; however, no new renter was found for any portion of September 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 September 2014, in the amount of **\$1,450.00.**

Cleaning costs

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.

In this case, the both parties have provided a different version as to the stated of the rental unit at the end of the tenancy; however, I accept the tenant's version that the rental unit was left reasonable clean. Although there may have been minor areas that needed addition cleaning, no evidence was submitted such as photograph to show that rental unit was not left reasonable cleaned. As a result, I find the landlord has failed to prove that the tenant breached section 37 of the Act. Therefore, I dismiss the landlord's claim for cleaning costs.

I find that the landlord has established a total monetary claim of **\$1,500.00** comprised of the above described amount and the \$50.00 fee paid for this application.

I order that the landlord retain the Deposits totaling **\$1,450.00** in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of **\$50.00**.

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 and may keep the Deposits 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: April 09, 2015

Residential Tenancy Branch

