



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNR, MNSD, MNDC, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord for a monetary order for unpaid rent, for loss of rent, for compensation under the Act and the tenancy agreement, for cleaning of the rental unit, for an order to retain the security deposit in partial satisfaction of the claim and to recover the filing fee for the Application.

Only the Landlord's agents, L.P. and R.K. appeared at the hearing. They gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions to me.

As the Tenants did not attend, service of the Landlords' application materials was considered. R.K. testified that the Tenants were both individually served by registered mail on September 24, 2014. L.P. provided the tracking numbers for each Tenant and advised that the packages were returned unclaimed. The Tenants cannot avoid service by refusing to accept registered mail. Section 90 of the *Act* provides that documents served by registered mail are deemed served five days later and accordingly I find that the Tenants were served as of September 29, 2014.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

1. Are the Landlords entitled to monetary compensation from the Tenants?
2. Should the Landlord be entitled to retain the security deposit?

Background and Evidence

This tenancy began March 1, 2013. Monthly rent was payable in the amount of \$700.00 per month. The Tenants paid a security deposit of \$350.00 on February 26, 2013 and the pet damage deposit in two installments; first a payment of \$175.00 on April 3, 2013 and the second of \$175.00 on May 29, 2013.

The Landlord issued a Notice to End Tenancy and applied for an Order of Possession and monetary order for unpaid rent and damage to the rental unit. The hearing occurred on August 18, 2014 wherein the Arbitrator granted the Landlord's request for an Order of Possession and compensated the Landlord their request for the sum of \$400.00 which included the \$50.00 filing fee as well as rent due as of August 1, 2014. The Landlord was permitted to retain \$350.00 of the Tenants' security deposit leaving a balance of \$250.00 held by the Landlord.

Following the August 18, 2014 hearing the Tenants applied for Review Consideration. Their request was denied by decision dated September 9, 2014.

The Landlord testified that the Tenants moved out on September 12, 2015 and while they vacated the property, the Landlord has incurred substantial costs to clean the rental unit due to the condition it was left in by the Tenants.

In the within hearing the Landlord sought claims as follows:

Rent owing for August 2014	\$700.00
Loss of rent for September 2014	\$700.00
Cleaning costs (receipt provided)	\$210.00
Refuse removal (receipt provided)	\$90.00
Carpet cleaning (receipt provided)	\$84.00
Filing fee	\$50.00
Total claimed	\$1,834.00

The Landlord further testified that the carpet cleaning and duct cleaning were a direct result of damage done by the Tenants' pets such that the Landlord wished to retain the pet damage deposit in the amount of \$250.00.

Analysis

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities.

Awards for compensation are provided in sections 7 and 67 of the *Act*. Accordingly, an applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

In this instance, the burden of proof is on the Landlord to prove the existence of the damage/loss and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the Tenants. Once that has been established, the Landlord must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the Landlord took reasonable steps to minimize the damage or losses that were incurred.

The Tenants did not attend the hearing and as such the Landlords' evidence was undisputed.

Based on all of the above, the evidence and testimony, and on a balance of probabilities, I find as follows.

I accept the Landlords evidence as to the condition of the rental unit when the Tenants left. I find the Tenant did not clean the unit and this has caused losses to the Landlord. Furthermore, I find that due to the condition the rental unit was left in by the Tenants, in addition to the fact they did not move out until September 12, 2014, the Landlords have suffered a loss of rent for one month.

As my fellow Arbitrator dealt with the Landlords' claim for rent for August 2014 in the hearing on August 18, 2014, I dismiss the Landlords' claim based on the principle of *res judicata*.

Res judicata is a rule in law that a final decision has been made and cannot be heard again. There are three preconditions that must be met before the principle of res judicata can operate:

- 1) The same question has been decided in an earlier proceeding;
- 2) The earlier decision was final; and
- 3) The parties to the earlier decision are the same in both the proceedings.

As the Landlords' claim for August rent has already been decided, I am not able to hear this request again.

The evidence indicates that the carpets were not steam cleaned when the Tenant left, as required under the Act and the tenancy agreement.

Section 7 of the Act states:

(1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

[Reproduced as written.]

Section 67 of the Residential Tenancy Act states:

Without limiting the general authority in section 62(3) [*director's authority*], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

[Reproduced as written.]

Therefore, I allow the Landlords **\$1,134.00** for the claims before me which include the above mentioned cleaning costs, waste removal, rent for September 2014 and the filing fee.

I order that the Landlords retain the pet damage deposit of **\$250.00** in partial satisfaction of the claim and I grant the Landlord an Order under section 67 for the balance due of **\$884.00**.

This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

Conclusion

The Landlord is granted monetary compensation for loss of rent for September 2014, cleaning, carpet cleaning and refuse removal at the rental unit in addition to the filing fee. The Landlords' claim for rent for August 2014 is dismissed. Landlord may retain the balance of the pet damage deposit and is granted a Monetary Order for the balance due in the amount of \$884.00.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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 27, 2015

Residential Tenancy Branch

