



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

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

The landlord attended the hearing. As the tenant did not attend the hearing, service of the Notice of Dispute Resolution Hearing was considered.

The Residential Tenancy Branch Rules of Procedure states that the 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 sent by registered mail on September 22, 2015, a Canada post tracking number was provided as evidence of service, the tenant did not appear.

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 tenant has 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?

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

Background and Evidence

The parties entered into a fixed term tenancy which began on May 1, 2013 and was to expire on April 30, 2014. The parties entered into a second fixed term agreement on May 1, 2014 and was to expire on April 30, 2015. Rent in the amount of \$1,375.00 was payable on the first of each month. The tenant paid a security deposit of \$675.00. The tenancy ended on August 31, 2014.

The parties completed a move-in and move-out condition inspection report. A copy of the report was submitted as evidence.

The landlord claims as follows:

a.	Loss of rent for September 2014	\$1,375.00
b.	Cleaning service	\$ 300.00
c.	Cost of repainting green walls	\$ 150.00
d.	Light bulbs (8)	\$ 80.00
e.	Replace keys	\$ 45.00
f.	Cost to wash and rehang the drapes	\$ 100.00
g.	Filing fee	\$ 50.00
	Total claimed	\$ 2,100.00

Loss of rent for September 2014

The landlord testified that on August 28, 2014, the tenant verbally gave them three days' notice that they would be vacating the premises on August 31, 2014. The landlord stated that the tenant was not entitled to end the tenancy as they were under a fixed term agreement.

The landlord testified that as soon as notice was given they placed a for rent sign on the property and advertisements in local popular websites. However, due to only receiving three days' notice they were unable to find a new renter for any portion of September 2014. The landlord seeks to recover loss of rent for September 2014, in the amount of \$1,375.00.

Cleaning service

The landlord testified that the tenant failed to clean the rental unit and all the appliances and floors were left dirty. The landlord stated that because the tenant did not vacated the premises by the standard time on August 31, 2014, they had to rebook the cleaners to come back the next day which was a statutory holiday. The landlord stated that the cleaners charged them double their normal hourly rate because of the statutory holiday. The landlord seeks to recover the cost of cleaning in amount of \$300.00. Filed in evidence is a copy of the cleaning invoice in support of the landlord's claim.

Cost of repainting green walls

The landlord testified that at the start of the tenancy the rental unit was freshly painted and all the units are painted the standard white. The landlord stated that during the tenancy the tenant painted a wall florescent green, which was so bright the colour reflected onto another wall giving the appearance that two walls were painted. The landlord stated that the tenant did not have permission to change the colour of the wall and it took several coats of paint to return the wall back to its original colour. The landlord seeks to recover the amount of \$150.00.

Light bulbs (8)

The landlord testified that the tenant did not replace the burnt out light bulbs during the tenancy and there were a total of eight bulbs that had to be replaced at the end of the tenancy. The

landlord stated that they charge a standard rate of \$10.00 per bulb to cover their cost of material and labour. The landlord seeks to recover the amount of \$80.00.

Replace keys

The landlord testified that the tenant failed to return three keys at the end of the tenancy. The landlord stated that the tenant told them that the keys were lost on a beach when they were away on vacation. The landlord stated that the keys were made special and it cost \$15.00 per key. The landlord seeks to recover the cost to replace the keys in the amount of \$45.00.

Cost to wash and rehang the drapes

The landlord testified that the tenant failed to clean the drapes at the end of the tenancy. The landlord testified that it took approximately four hours to wash, and rehang the drapes, as there were panel drapes on two windows, and the large patio door that required cleaning. The landlord seeks to recover the amount of \$100.00.

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 September 2014

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,

...

In this case, the evidence of the landlord was that the tenant breached the fixed term tenancy by providing notice to end the tenancy on August 31, 2015. However, under the Act the tenant was not entitled to give notice to end the tenancy prior to the date specified in the tenancy agreement. I find the tenant has breach section 45(2) of the Act as the earliest date they could have legally ended the tenancy was April 30, 2015, as stated in the tenancy agreement.

Since the tenant failed to comply with the Act by ending the tenancy earlier than the Act allowed. The landlord is entitled to an amount sufficient to put the landlord in the same position as if the tenant had not breached the 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.

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 they placed a for rent sign on the property and posted advertisement on local popular websites but due only receiving three days' notice to end the tenancy was unable to find a new renter 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 **\$1,375.00**.

Damages

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.

Cleaning service

I accept the undisputed testimony of the landlord that the tenant failed to clean the rental unit to a reasonable standard. The move-out condition inspection supports the landlord's claim. I find the tenant breached the Act, when they failed to leave the rental unit reasonable cleaned and this caused losses to the landlord. Therefore, I find the landlord is entitled to recover the cost of cleaning in the amount of **\$300.00**.

Cost of repainting green walls

I accept the undisputed testimony of the landlord that the tenant painted a wall florescent green and that the tenant did not return the wall to the original colour prior to vacating the rental unit. The move-out condition inspection report supports the landlord's claim. I find the tenant has breached the Act, when they failed to repaint the wall and this caused losses to the landlord. I find the landlord is entitled to recover the amount of **\$150.00**.

Light bulbs (8)

I accept the undisputed testimony of the landlord that the tenant failed to replace the burnt out light bulbs during the tenancy and eight bulbs needed to be replaced at the end of the tenancy. The move-out condition inspection reports supports the landlord's claim. I find the tenant breached the Act, when they failed to replace the burnt out light bulbs and this caused losses to the landlord. I find the amount charged of \$10.00 per bulb, not unreasonable as this amount includes the material and labour. Therefore, I find the landlord is entitled to recover the cost of replacing the light bulbs the amount of **\$80.00**.

Replace keys

I accept the undisputed testimony of the landlord that the tenant failed to return all keys to the rental premises at the end of the tenancy. This is supported by the move-out condition inspection report. I find the tenant breached the Act, when they did not return all the keys that they were provided with at the start of the tenancy and this caused losses to the landlord. Therefore, I find the landlord is entitled to recover the cost of the keys in the amount of **\$45.00**.

Cost to wash and rehang the drapes

I accept the undisputed testimony of the landlord that the tenant did not clean the drapes at the end of the tenancy. This is supported by the move-out condition inspection report. I find the tenant breached the Act, when they failed to have the drapes cleaned at the end of the tenancy and this caused losses to the landlord. I find the amount claimed is reasonable based on panel drapes for two windows and a patio door. Therefore, I find the landlord is entitled to recover the cost for washing and rehang the drapes in the amount of **\$100.00**.

I find that the landlord has established a total monetary claim of **\$2,100.00** 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 **\$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 **\$1,425.00**.

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 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: April 27, 2015

Residential Tenancy Branch

