



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes 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 loss of rent, for damages to the unit and for an order to retain the security deposit 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 and there were no disputes in relation to review of the evidence submissions

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 loss of 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 agreed that the tenancy began on September 22, 2013. Rent in the amount of \$575.00 was payable on the first of each month. The tenant paid a security deposit of \$287.50 and a key deposit of \$100.00 (the "Deposits"). The tenancy ended on August 31, 2014.

The landlord claims as follows:

a.	Cleaning and damages	\$204.38
b.	Loss of rent for September 2014	\$575.00
c.	Filing fee	\$ 50.00
	Total claimed	\$829.38

Cleaning and damages

At the outset of the hearing the tenant stated that they do not dispute the landlord's claim for cleaning and damages.

Loss of rent for September 2014

The landlord's agent testified that the tenant did not provide any notice that they were ending the tenancy. The agent stated that on August 31, 2014, the tenant placed the keys to the rental unit under the office door and left without providing a forwarding address.

The landlord's agent testified that because no notice was given to end the tenancy, they were unable to find a new renter for any portion of September 2014. The agent stated that they placed advertisement in two local newspapers and a poster at the local laundromat. The landlord seeks to recover the loss of rent for September 2014, in the amount of \$575.00.

The tenant testified that they verbally informed the office staff on August 15, 2014, that they would be moving from the rental unit on August 31, 2014. The tenant testified that they felt they had no option but to leave on short notice as the landlord was harassing them to get rid of the cat. The tenant stated that the cat was very important to them and it was not an option for them to get rid of the cat. The tenant acknowledged that there was a no pet clause in the tenancy agreement.

The parties agreed that if the landlord is entitled to a monetary order, the tenant will pay the amount of \$50.00 per month, commencing on or before the last day of May 2015, and the like sum each month thereafter until paid in full.

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.

Cleaning and damages

The tenant did not dispute the landlord's claim for cleaning and damages. Therefore, I find the landlord is entitled to recover the cost of cleaning and damages in the amount of **\$204.38**

Loss of rent for September 2014

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

...

I accept the evidence of the tenant that their cat was very important to them; however, when they obtained the cat they were in breach of their tenancy agreement, as there was a no pet clause.

Further, even if I accept the tenant gave verbal notice on August 15, 2014, the tenant did not give notice in accordance with the Act. Under section 45(1) of the Act 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.

Since the tenant 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 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.

The duty to minimize the loss begins when the party entitled to claim damages becomes aware that damages are occurring. Failure to take the appropriate steps to minimize the loss will have an effect on a monetary claim, where the party who claims compensation can substantiate such a claim.

In this case, I accept the landlord's evidence that they were unable to find a new renter for any portion of September 2014, even after placing advertisements in local papers and in business establishments due to insufficient notice. 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 **\$575.00**.

I find that the landlord has established a total monetary claim of **\$879.38** comprised of the above described amounts and the \$50.00 fee paid for this application.

I order that the landlord retain the Deposit of \$387.50 in partial satisfaction of the claim and I grant the landlord an order under section 67 of the Act for the balance due of **\$491.88**.

The tenant is to pay the balance due at the rate of \$50.00 per month, commencing on or before the last day of May 2015, and the like sum is to be paid on or before the last day of each month thereafter until paid in full. Any missed payments the landlord is entitled to enforce the order in the Provincial Court (Small Claims).

Conclusion

The landlord is granted a monetary order 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: May 12, 2015

Residential Tenancy Branch

