



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CONNAUGHT MANAGEMENT LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNSD, MNDC, MNR, MND, 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, for money owed or compensation for loss and for an order to retain the security deposit in partial satisfaction of the claim.

The landlord's agent attended the hearing. As the tenants did not attend the hearing, service of the Notice of Dispute Resolution Hearing was considered.

The Residential Tenancy Branch Rules of Procedure states that each respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing.

The landlord's testified the Application for Dispute Resolution and Notice of Hearing were sent by registered mail on October 27, 2014, Canada post tracking numbers were provided as evidence of service. The agent indicated that the Canada post track history shows the documents were successfully delivered to the tenant RC on November 10, 2014.

I find the RC, was served in accordance with the Act on November 10, 2014. I further find the tenant CC was deemed to have been served five days after it was mailed.

The landlord's agent 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 June 1, 2013 and was to expire on April 30, 2014. Rent in the amount of \$1,350.00, was payable on the first of each month. The tenants paid a security deposit of \$675.00. The tenancy ended on February 28, 2015.

A move-in and move-out condition inspection report was completed.

The landlords claim as follows:

a.	Loss of rent for March 2014	\$ 675.00
b.	Recover liquidated damages clause	\$ 675.00
c.	Balance of damages after credits applied	\$ 12.95
d.	Filing fee	\$ 50.00
	Total claimed	\$1,412.95

Loss of rent for March 2014

The landlord's agent testified that on February 5, 2014, the tenants sent an email ending the tenancy effective February 28, 2014. The agent indicated that the tenants were not entitled to give notice earlier than the expiry of the fixed term agreement. The agent stated that they placed advertisements on local popular websites and were able to find a new renter commencing March 15, 2014. The landlord seeks to recover loss of rent from March 1 to March 14, 2014, in the amount of \$675.00.

Recover liquidated damages clause

The landlord's agent testified that clause "A" in the addendum to the tenancy agreement allows the landlord to collect liquidated damages to cover the administrative cost of re-renting the premises that is equal to a half month's rent, if the tenants terminate the tenancy prior to the fixed term. The agent stated the tenants ended the tenancy on February 28, 2014, prior to the expiry of the fixed term. The landlord seeks to recover liquidated damages in the amount of \$675.00.

Balance of damages after credits applied

The landlord's agent testified that the tenant CC agreed in the move-out condition inspection report that they are responsible for the cost of cleaning, for the cost of carpet cleaning and for the cost to repair the damaged wall and agreed that the landlord could retain the security deposit. The agent stated that the total cost for these items was the amount of \$918.55, which exceeded the security deposit. Filed in evidence are receipts. The agent stated that after the security deposit of \$675.00, the credit of \$100.00 that the tenants were given for two chairs and the overpayment of rent of \$130.60 were applied that left a balance owed of \$12.95.

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 March 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's agent was that the tenants breached the fixed term tenancy by providing notice to end the tenancy on February 28, 2014. However, under the Act the tenants were not entitled to give notice to end the tenancy prior to the date specified in the tenancy agreement. I find the tenants have breached 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 tenants failed to comply with the Act by given notice to end 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 tenants had not breached the Act. This includes compensating the landlord for any loss of rent up to the earliest time that the tenants 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's agent was that they advertised the rental unit for rent on local popular websites and were able to find a new renter commencing March 15, 2014, I find the landlord made reasonable efforts to minimize the loss. Therefore, I find the landlord is entitled to recover loss of rent from March 1, 2014 to March 14, 2014, in the amount of **\$675.00**.

Recover liquidated damages clause

I have reviewed the tenancy agreement filed in evidence. Clause "A" allows for the landlord to collect liquidated damages in the amount equal to half a month rent for the administrative cost of re-renting the premises. As I have previously found the tenants breached the Act, when they gave notice to end the tenancy earlier than the Act, I find the landlord is entitled to recover the liquidated damages in the amount of **\$675.00**.

Balance of damages after credits applied

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.

The tenant CC agreed in the move-out condition inspection that they are responsible for the cost of cleaning the rental unit, for the cost of carpet cleaning and the cost to repair the wall. The tenant gave the landlord permission to retain the security and apply the security deposit toward the cost. The tenants had also received a credit from the landlord for two chairs and had an overpayment of rent on the ledger. After the costs for the above work was applied, and the credits for the above were applied, there was a balance due to the landlord. Therefore, I find the landlord is entitled to recover the amount of **\$12.95**.

I find that the landlord has established a total monetary claim of **\$1,412.95** comprised of the above described amounts and the **\$50.00** fee paid for this application. I grant the landlord an order under section 67 of the Act for the above noted amount.

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 formal monetary order in the above 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: June 17, 2015

Residential Tenancy Branch

