



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MND, MNDC, MNSD, FF

Introduction

This hearing dealt with the landlords' application pursuant to the *Residential Tenancy Act* (the Act) for:

- a monetary order for unpaid rent, for damage to the rental unit, and for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- authorization to retain all or a portion of the tenants' security deposit in partial satisfaction of the monetary order requested pursuant to section 38;
- authorization to recover their filing fee for this application from the tenants pursuant to section 72.

The landlord, V.M. (the landlord) attended the hearing acting as agent for the landlord. J.M. and provided undisputed and affirmed testimony. The landlord stated that both tenants were served with the Notice of Hearing Package and the submitted documentary evidence by Canada Post Registered Mail on April 21, 2015. The landlords have submitted copies of both Customer Receipt Tracking numbers as confirmation of service. The tenants did not attend or submit any documentary evidence. I waited until 1:10 p.m. in order to enable the tenants to connect with this teleconference hearing scheduled for 1:00 p.m. The landlord attended the hearing and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. On the basis of this evidence and in accordance with sections 89(1) and 90 of the *Act*, I am satisfied that the tenants were deemed served with the dispute resolution packages on April 26, 2015, the fifth day after the registered mailing of these packages.

Issue(s) to be Decided

Are the landlords entitled to a monetary order for unpaid rent, for damage to the rental unit, for money owed or compensation for damage or loss and recovery of the filing fee? Are the landlords entitled to an order authorizing them to retain all or part of the pet damage and security deposits?

Background and Evidence

This tenancy began on October 1, 2014 on a fixed term tenancy ending on June 30, 2015 and then thereafter on a month-to-month basis as shown by the submitted copy of the signed tenancy agreement. The monthly rent was \$1,650.00, payable on the 1st day of each month. A security deposit of \$825.00 and a pet damage deposit of \$250.00 were paid. A condition inspection report for the move-in was completed and signed on September 28, 2014 and a condition inspection report for the move-out was completed and signed on April 29, 2015. The tenants' forwarding address was provided in writing to the landlord on the move-out report on April 29, 2015. The landlord also provided an "update to condition inspection report (CIR)" dated November 28, 2014 which was completed and signed by both parties.

The landlord stated that the tenants vacated the rental property on March 31, 2015 without notice and without paying rent of \$1,650.00 for April 2015. The landlord stated that the tenants attended the joint move-out inspection after they were served with a Notice of Final Opportunity to conduct a condition inspection report for the move-out. On April 29, 2015 a condition inspection report for the move-out was completed. The move-out report noted damage to mirrored bedroom doors which were cracked and that blinds and fans needed cleaning. The move-out report also notes that the tenant did not agree that the fans and blinds required cleaning as the tenant moved out nearly one month prior. The landlord also provided direct testimony that efforts were made to re-rent the premises, but that they were unsuccessful in re-renting the premises until May 10, 2015. The landlord stated that she was amending her application to lower the amount for the loss of rental income for May from \$1,650.00 to \$550.00 (pro-rated= $\$1,650.00/30 \text{ days} = \$55.00 \times 10 \text{ days} = \550.00).

The landlord also relied on a hand written quotation for replacing damaged mirrors in the closet doors from a glass repair technician. The quotation is for \$530.00 plus tax. The landlord relied on a copy of the condition inspection report which stated, "mirrored bedroom doors in bedroom both cracked". I also note that no notations were made by the tenant(s) in regards to this claim by the landlord on the condition inspection report

for the move-out completed April 29, 2015. During the hearing the landlord stated that since the estimate was given it was noticed that the frame on the door was bent and required replacement. The landlord has not provided any details for the complete restoration of the mirrored doors as no repairs have been made as of the date of this hearing.

The landlords entered into written evidence a copy of a handwritten quotation from a cleaning service for cleaning blinds/fans at \$25.00 per hour @ 6 hours. The landlord clarified that she did not pay a professional cleaner, but cleaned the rental unit herself. The landlord relied on a copy of the completed condition inspection report which stated that "blinds + fans need to be cleaned". The landlord stated that she had witnesses to the time she spent cleaning these items, but did not provide any witnesses or statements.

The landlords seek a monetary claim of \$4,050.00 which consists of

Unpaid Rent for Improper Notice April	\$1,650.00
Loss of Rental Income for May	\$550.00
Repair of Mirrored Doors	\$600.00
Blinds and Fan Cleaning	\$150.00
Total	\$2,950.00

Analysis

While I have turned my mind to all the documentary evidence, and the testimony of the agent, not all details of the submissions and / or arguments are reproduced here. The principal aspects of the landlords' claim and my findings around it are set out below.

Section 67 of the Act provides that, where an arbitrator has found that damages or loss results from a party not complying with the Act, an arbitrator may determine the amount of that damages or loss and order the wrongdoer to pay compensation to the claimant. The claimant bears the burden of proof. The claimant must show the existence of the damage or loss, and that it stemmed directly from a violation of the agreement or a contravention of the Act by the wrongdoer. If this is established, the claimant must provide evidence of the monetary amount of the damage or loss. The amount of the loss or damage claimed is subject to the claimant's duty to mitigate or minimize the loss pursuant to subsection 7(2) of the Act.

I find that the landlords have established a claim for unpaid rent of \$1,650.00 for April 2015. The landlord has provided undisputed affirmed testimony that the tenant vacated the rental unit on March 31, 2015 and did not provide any proper notice to vacate the rental unit. The landlords have been successful in this portion of the claim.

I also find that the landlords having not been given proper notice to vacate were unable to re-rent the unit until May 10, 2015. The landlord provided direct testimony that efforts to advertise and re-rent the unit were immediately made, but that the unit was not re-rented until May 10, 2015. The landlords have been successful in establishing a claim for \$550.00 for the pro-rated amount for 10 days of lost rental income before they were able to re-rent the unit.

The landlords' claim of \$600.00 for the repair of the mirrored doors has been established. I accept the undisputed affirmed testimony from the landlord in conjunction with the completed condition inspection reports for the move-in and the move-out. The landlord submitted a copy of a letter of a witness, J.Q. who was present during the inspection and noted that there were no cracks in the mirrored closet doors on September 28, 2014. I also note that while the tenants made comments in the condition inspection report for the move-out to dispute the cleaning of the fans and blinds that no mention was made for the damaged mirrored doors. As such, I find that this portion of the landlords' claim is uncontested by the tenants.

The landlords' claim for cleaning costs of \$150.00 for the blinds and fans have not been established. The landlords rely on the completed condition inspection reports for the move-in and the move-out, yet there are no notations of dirty fans or blinds in the report itself. The only notation is in section z, end of tenancy, it states, "...blinds+fans need to be cleaned". The landlord stated that she had many pictures and a witness to the state of the rental unit, but did not submit any evidence to support this claim. The landlords have alleged that repairs were required to the rental unit as a result of the tenants' actions. To be successful in such a claim, the landlords must show the existence of the damage or loss, and that it stemmed directly from a violation of the agreement or a contravention of the Act by the tenants. The landlords have not provided me with any receipts or evidence of the alleged damage or loss. On this basis, I find that the landlords have failed to meet their burden in respect of this claim for damages. I therefore dismiss this portion of the landlord's claim without leave to reapply.

The landlord testified that she continues to hold the tenants' security deposit of \$825.00 and pet damage deposit of \$250.00 since the tenancy began on October 1, 2014. Over that period, no interest is payable on the landlords' retention of the security and pet

damage deposits. Using the offsetting provisions of section 72 of the *Act*, I allow the landlords to retain the tenants' security and pet damage deposits totalling, \$1,075.00. No interest is payable over this period.

As the landlords were successful in this application, I find that the landlords are entitled to recover the \$50.00 filing fee paid for this application.

Conclusion

I issue a monetary order in the landlord's favour in the amount of \$1,775.00 under the following terms:

Unpaid Rent for Improper Notice April	\$1,650.00
Pro-Rated Loss of Rental Income for May	\$550.00
Repair of Mirrored Doors	\$600.00
Offsetting Security/Pet Deposits	-\$1,075.00
Recover Filing Fee	\$50.00
Monetary Order Granted	\$1,775.00

The landlords are provided with these Orders in the above terms and the tenant(s) must be served with this Order. Should the tenant(s) fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders of that Court.

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: September 11, 2015

Residential Tenancy Branch

