



Dispute Resolution Services

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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 landlords filed under the Residential Tenancy Act (the "Act"), for a monetary order for money owed or loss, 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 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 testified the Application for Dispute Resolution and Notice of Hearing were sent by registered mail on June 15, 2015, Canada post tracking numbers were provided as evidence of service.

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 tenants have 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

Are the landlords entitled to a monetary order for money owed or loss under the Act?
Are the landlords entitled to monetary compensation for damages?
Are the landlords entitled to retain the security deposit in partial satisfaction of the claim?

Background and Evidence

the tenancy began on May 1, 2015. Rent in the amount of \$725.00 was payable on the first of each month. The tenants paid a security deposit of \$362.50. The tenancy ended on June 1, 2015.

The landlords claim as follows:

a.	Loss of rent for June 2015	\$ 725.00
b.	Recover pro-rated rent for April 2015	\$ 181.25
c.	Re-painting rental unit	\$ 262.50
d.	Paint	\$ 160.54
e.	Advertising	\$ 64.17
f.	Verbal estimate for floor repair	\$ 100.00
g.	Filing fee	\$ 50.00
	Total claimed	\$1,543.46

Loss of rent for June 2015

The landlord testified that the tenants did not give sufficient notice to end the tenancy. The landlord stated that the tenants gave notice on May 7, 2015 to end the tenancy June 1, 2015.

The landlord testified that they advertised the rental unit in the local paper and on several popular websites; however, they were unable to find a new renter for June 2015. The landlords seek to recover loss of revenue for June 2015, in the amount of \$725.00.

Recover pro-rated rent for April 2015

The landlord testified that they gave the keys early to the tenants only to allow them to paint the unit as they wanted to paint the walls in different colours; however, the tenants took advantage of the situation and they moved into the rental unit early without their permission. The landlords seek to recover prorated rent for April 2015, in the amount of \$181.25.

Re-painting rental unit

The landlord testified that they allowed the tenants to paint the rental unit the color of their choice as they were expecting the tenants to be there for a while and it was agreed that they would repaint the unit back to the original colours at the end of the tenancy. The landlord seeks to recover the cost of repainting in the amount of \$262.50. The landlord indicated they have not provided any receipts to support this portion of their claim.

Paint

The landlord testified that they seek to recover the cost of the paint that they purchased for the tenants to paint the rental unit walls in different colours. The landlord seeks to recover the amount of \$160.54. Filed in evidence is a receipt.

Advertising

The landlord testified that they placed an advertisement in the local paper to mitigate their loss of rent for June 2015. The landlord seeks to recover the amount of \$64.17. The landlord indicated they did not file in evidence a copy of the advertisement or the receipt.

Verbal estimate for floor repair

The landlord testified that the tenants caused damage to the new wood floor in the bedroom, by scratching the floor. The landlord indicated that they had a verbal estimate given. 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. In this case, the landlords have 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 June 2015

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

In this case, the evidence of the landlord was the tenants did not give notice until May 7, 2015 to end the tenancy on June 1, 2015. Under section 45(1) of the Act the tenants were required to provide the landlords with at least one month notice to end the tenancy. I find that the tenants have breached the Act as the earliest date they could have legally ended the tenancy was June 30, 2015.

Since the tenants failed to comply with the Act by not given the landlord sufficient notice to end the tenancy. The landlords are entitled to an amount sufficient to put the landlords in the same position as if the tenants had not breached the Act. This includes compensating the landlords 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 was that advertised the rental unit in the local paper and on several popular websites, I find the landlords made reasonable efforts to minimize the loss. Therefore, I find the landlords are entitled to recover unpaid rent in the amount of **\$725.00**.

Recover pro-rated rent for April 2015

I accept the undisputed testimony that the landlords gave the tenants the keys for the purpose of painting the rental unit and the tenant's moved in earlier without the consent of the landlord.

However, I find the landlords did not mitigate the loss as it is unreasonable to give possession of the keys to the rental unit to the tenants prior to their tenancy commencing.

If the only reason the tenant were allowed to access the unit was solely for the purpose of painting, the landlord should have made arrangements to meet the tenants at the rental unit to unlock the door when they were starting to paint and relock the door at the end of the day. Therefore, I dismiss this portion of their claim.

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.

Re-painting rental unit

Under the Residential Tenancy Policy Guideline 1, which clarifies the rights and responsibilities of the parties for the premises under the Act, the tenants are expected to return the rental unit to the original condition of the rental unit **for any changes not explicitly** consented to by the landlord.

[My emphasis added]

In this case, the tenants had the landlords' consent to change the colour of the paint on the wall. The landlords have provided no evidence, such as a term in the tenancy agreement, which would require the tenants to repaint the rental unit back of the original colour at the end of the tenancy. I find the landlords have failed to prove a violation of the Act, by the tenants. Therefore, I dismiss this portion of their claim.

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Paint

In this case, the landlords seek to recover the cost of paint they purchased for the tenants to repaint the rental unit. I find the landlords have failed to prove a violation of the Act, by the tenants. Therefore, I dismiss this portion of their claim.

Advertising

The landlords seek to recover the cost of advertisement. However, the landlords have not provided a copy of the advertisement or a copy of the receipt for my review and consideration. I find the landlords have failed to provide sufficient evidence to support this portion of their claim. Therefore, I dismiss this portion of their claim.

Verbal estimate for floor repair

The landlords seek to recover the estimated cost to repair the floor. However, I find a verbal estimate is not sufficient evidence to support their claim. Further, although the move-out condition inspection indicated the floor was scratched, no photographs were provided for my review or consideration to determine if the amount is reasonable. Therefore, I find the landlord has failed to provide sufficient evidence to support this portion of their claim.

I find that the landlords have established a total monetary claim of **\$775.00** comprised of the above described amount and the \$50.00 fee paid for this application.

I order that the landlords retain the security deposit of **\$362.50** in partial satisfaction of the claim and I grant the landlords an order under section 67 of the Act for the balance due of **\$412.50**.

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

Conclusion

The landlords are granted a monetary order and may keep the security deposit in partial satisfaction of the claim and the landlords are 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: November 23, 2015

Residential Tenancy Branch

