



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNR, MNDC, FF

Introduction

This hearing was convened in response to applications by the landlords and the tenants.

The landlords' application is seeking orders as follows:

1. For a monetary order for unpaid rent;
2. For a monetary order for damages;
3. To keep all or part of the security deposit; and
4. To recover the cost of filing the application.

The tenants' application is seeking orders as follows:

1. Return all or part of the security deposit; and
2. To recover the cost of filing the application.

The landlord appeared.

Tenants' application

This matter was set for hearing by telephone conference call at 2:00 P.M on this date. The line remained open while the phone system was monitored for ten minutes and the only participant who called into the hearing during this time was the landlord. Therefore, as the tenants did not attend the hearing by 2:10 P.M, and the landlord appeared and was ready to proceed, I dismiss tenants' claim without leave to reapply.

Landlords' application

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 the respondents 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 November 20, 2015, to the service address provided by the tenants in their application.

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 unpaid rent?

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 March 1, 2014. Rent in the amount of \$900.00 was payable on the first of each month. The tenants paid a security deposit of \$450.00.

The landlords claim as follows:

a.	Loss of revenue for July 2015	\$ 900.00
b.	Change the locks	\$ 110.00
c.	Damages	\$ 192.00
d.	Late payments of rent	\$ 100.00
e.	Filing fee	\$ 50.00
	Total claimed	\$1,352.00

Loss of revenue for July 2015

The landlord testified that the tenants gave notice to end their tenancy effective June 30, 2015. The landlord stated that they had not heard from the tenants and they went by the rental unit on June 30, 2015, and it appeared the tenants had not vacated as their belongings were still on the property. The landlord stated it was not until July 2, 2015, that they finally heard from the tenants who indicated they were finished cleaning

on June 29, 2015; however, they had just finished removing their belongings on July 2, 2015. Filed in evidence are copies of text messages.

The landlord testified that because they had not heard from the tenants and the tenants had not returned vacant possession of the unit to the landlord. They were unable to let the new renters move into the rental unit on July 1, 2015 and the new renter found accommodations elsewhere. The landlord stated that as a result they lost revenue for July 2015. The landlords seek to recover loss of revenue for July 2015, in the amount of \$900.00.

Late payments of rent

The landlord testified that the tenants were late paying rent for March 2015, April 2015, May 2015 and June 2015. The landlords seek to recover a late fee of \$25.00 for each month the tenants were late paying rent in the total amount of \$100.00.

Change the locks

The landlord testified that the tenants did not return the keys and they were required to change the locks. The landlords seek to recover the amount of \$110.00.

Damages

The landlord testified that the tenants left garbage behind in the rental unit. The landlords seek to recover the cost of disposal in the amount of \$45.00.

The landlord testified that the tenants dog also chewed items. The landlord seeks to recover the amount of \$60.00.

The landlord testified that the tenants also caused damage the carpet which had to be repaired. The landlords seeks to recover the cost of the repair in the amount of \$87.00.

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 revenue for July 2015

In the case the tenancy was to end on June 30, 2015 at 1:00pm. Under section 57(2) of the Act a landlord must not take actual possession of the rental unit that is continued to be occupied by the tenants, unless the landlord has a writ of possession from the Supreme Court.

I accept the undisputed testimony of the landlord that the tenants' continue to occupy the premises after the tenancy legally ended on June 30, 2015, as their belonging were occupying the premise and the landlord had not heard from the tenants until July 2, 2015. This is supported by the text messages. I find the tenants breached the Act, when they failed to return vacate possession of the rental unit to the landlords on June 30, 2015, and were overholding the premises until July 2, 2015.

As a result, of the tenants overholding the premises the landlord new renter could not move into the rental unit on July 1, 2015. The new renters found living accommodations elsewhere. I find the landlord suffered a loss as a result of the tenants breaching the Act. Therefore, I find the landlords are entitled to recover loss of rent from the overholding tenants in the amount of **\$900.00**.

Late payment charges

Under section 7 of the Residential Tenancy Regulations a landlord may charge a non-refundable fee for late payments of rent if the tenancy agreement provides for that fee.

I have reviewed the tenancy agreement clause 8, provides that the tenants are responsible to pay a late payment charge. However, I find the landlords have failed to provide sufficient evidence as they were unable to indicate when rent was paid for each month claimed, in order for me to determine if rent was in fact late. Therefore, I dismiss this portion of their claim.

Change the locks

In this case, I accept the undisputed evidence of the landlord that the tenants did not return the keys as that is support by the text messages. I find the tenants breached the Act, when they failed to return the keys to the landlords at the end of the tenancy and this caused losses to the landlords. However, I am not satisfied on the amount claimed by the landlords as no receipts were submitted to support the amount claimed. Therefore, I granted the landlords a nominal amount to recognize the breach of the Act by the tenants in the amount of **\$5.00**

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.

In this case, the landlords did not provide a copy of the move-in condition inspection report, which is evidence of the condition of the rental unit at the start of the tenancy. Nor did the landlords submit any photographs of the damaged items at the end of the tenancy for my review or consideration. I find the landlords have failed to provide sufficient evidence that the tenants caused damage to the carpet, that items were left chewed or that an unreasonable amount of garbage was left behind. Therefore, I dismiss this portion of the landlords' claim.

I find that the landlords have established a total monetary claim of **\$955.00** comprised of the above described amounts and the \$50.00 fee paid for this application.

I order that the landlords retain the security deposit of **\$450.00** in partial satisfaction of the claim and I grant the landlords an order under section 67 of the Act for the balance due of **\$500.00**.

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: December 14, 2015

Residential Tenancy Branch

