



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

MNR, MNSD, MND, FF

Introduction

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

The landlords' application is seeking orders as follows:

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

The tenant's application is seeking orders as follows:

1. For money owed or compensation for damage or loss under the Act;
2. Return all or part of the security deposit; and
3. To recover the cost of filing the application.

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.

Preliminary matter

In this matter the tenant filed an amendment to their application on November 30, 2015, which was sent to the landlord by register mailed. I find the tenant did not comply Residential Tenancy Branch Rules of Procedure 4.6 as the respondent must receive the amendment not less than 14 day prior to the hearing. Therefore, the amendment was not permitted.

The tenant withdrew their claim. Therefore, I grant the tenant liberty to reapply.

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 parties agreed that the tenancy began in 2011. Rent in the amount of \$1,300.00 was payable on the first of each month. The tenant paid a security deposit of \$650.00. The tenancy ended on July 7, 2015.

The landlords claim as follows:

a.	July 2015, rent	\$1,300.00
b.	Cleaning of rental unit	\$ 500.00
c.	Disposal bin	\$ 250.00
d.	Loss of additional rent	\$1,950.00
e.	Filing fee	\$ 50.00
	Total claimed	\$4,050.00

July 2015, rent

Both parties agreed the tenant was occupying the rental unit on July 1, 2015, when rent was due under the terms of the tenancy agreement.

The landlord testified that the tenant attended their property and verbally informed them on June 30, 2015, that they would be vacating due to water damage. The landlord stated that the tenant did not give sufficient notice to end the tenancy and did not notify the landlords at any time during the tenancy that there were any water issues.

The tenant testified that they did not pay rent for July 2015, because of a mould issue. The tenant states that the date was not June 30, 2015, rather it was June 27, 2015, that they informed the landlord they were ending the tenancy.

Cleaning of rental unit

The landlord testified that the tenant did not clean the rental unit at the end of the tenancy. The landlord stated that it took them 25 hours to clean and seek compensation at the rate of \$20.00 per hour. The landlords seek to recover the amount of \$500.00.

The tenant denied the rental unit was left in such a condition that it would take 25 hours to clean.

Disposal bin

The landlord testified that the tenant left furniture and other items in the rental unit, which they had to rent a disposal bin. The landlords seek to recover the amount of \$250.00. Filed in evidence are photographs of furniture left behind.

The tenant agreed they left furniture items behind, which are shown in the photographs. The tenant stated that a disposal bin was not needed to dispose of the items, and it is more likely the disposal bin was needed because the landlord needed to make repairs to the rental unit.

Loss of additional rent

The landlord testified that they loss further rent as the tenant called the municipality and they were required to get a building permit as the work that was required to be completed was over \$5,000.00. The landlord stated the permit took six weeks to obtain.

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.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

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.

Rent

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*

...

Rules about payment and non-payment of rent are defined in Part 2 of the Act.

Rules about payment and non-payment of rent

26 (1) *A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.*

The evidence of the both parties was on June 27 or June 30, 2015, the tenant gave notice to end the tenancy and vacated the property on July 7, 2015, due to mould in a corner of the rental unit. However, the tenant did not give the landlords any prior notice that there was a water issue or a mould issue prior to ending their tenancy. Nor did the tenant give the landlord a reasonable amount of time to investigate the water source or make the repair.

Further, the tenant was still residing in the rental unit on July 1, 2015, when rent was due and owing. I find the tenant breached section 45 and 26 of the Act and this caused losses to the landlord. Therefore, I find the landlords are entitled to unpaid rent for July 2015, in the amount of **\$1,300.00**.

Cleaning of rental unit

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.*

In this case, both parties have provided a different version of event. The evidence of the landlord was that the rental unit was left dirty and 25 hours of cleaning was required. The tenant denied the rental unit was left in such a condition that it would take 25 hours to clean.

In this case, I find the landlords have failed to provide sufficient evidence, as the photographs submitted in evidence are not sufficient to determine that 25 hours of cleaning was required. Therefore, I dismiss this portion of the landlord's claim.

Disposal bin

In this case, the evidence of the landlord was a disposal bin was required to dispose of the tenants belongings. The evidence of the tenant was the disposal bin was likely required as a result of repairs. The tenant did not deny the items in the photographs were left behind, such as a couch, dresser, stroller and other items.

While I find it highly unlikely that the disposal bin was rented solely to dispose of the tenants belonging, I find the tenant breached the Act, when they failed to remove the items for the rental unit and this caused losses to the landlords. Therefore, I find it appropriate to award the landlord a reasonable amount to dispose of the items in the amount of **\$100.00**.

Loss of additional rent

Even if I accept that the tenant called the municipality on the landlord and the municipality would not allow the landlords to make repairs to the unit without a permit which took 6 weeks to obtain. I find there is no violation of the Act, by the tenant. Any costs or losses are not the responsibly of the tenant. Therefore, I dismiss this portion of the landlords' claim.

I find that the landlords have established a total monetary claim of **\$1,450.00** comprised of the above described amounts and the \$50.00 fee paid for this application.

I order that the landlord retain the security deposit of **\$650.00** partial satisfaction of the claim and I grant the landlords an order under section 67 of the Act for the balance due of **\$800.00**. This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

Conclusion

The landlords are is 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: January 5, 2016

Residential Tenancy Branch

