



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNR, MNDC, 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 and for an order to retain the security deposit in partial satisfaction of the claim.

The landlord attended the hearing. As the tenant 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 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 October 24, 2015, a Canada post tracking number was provided as evidence of service.

The landlord testified that the package was returned unclaimed.

Residential Tenancy Policy Guideline #17 states,

Where a document is served by registered mail, the refusal of the party to either accept or pick up the registered mail, does not override the deemed service provision. Where the registered mail is refused or deliberately not picked up, service continues to be deemed to have occurred on the fifth day after mailing.

I find that the tenant has been duly served in accordance with Section 90 of 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

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 tenancy began on December 1, 2014. Rent in the amount of \$1,375.00 was payable on the first of each month. The tenant paid a security deposit of \$675.00. The tenancy ended on April 10, 2015.

The landlord claims as follows:

a.	Unpaid rent for March 2015	\$1,375.00
b.	Unpaid rent balance of fixed term	\$9,625.00
c.	Repairs and cleaning	\$1,388.86
d.	Filing fee	\$ 100.00
	Total claimed	\$12,388.86

Unpaid rent for March 2015

The landlord testified that the tenant's cheque for March 2015 was returned by the bank due to insufficient funds. The landlord stated that the tenant did not pay the outstanding rent prior to vacating the premise. The landlord seeks to recover unpaid rent for March 2015, in the amount of \$1,375.00. Filed in evidence is a copy of the cheque, which shows it was returned by the bank and corresponding text messages between the parties.

Unpaid rent balance of fixed term

The landlord testified that the tenant was under a fixed term agreement and breached the lease when they failed to pay rent. The landlord stated that they were able to find new renter commencing May 15, 2015. The landlord seeks to recover the unpaid rent for the remainder of the lease in the amount of \$9,625.00.

Repairs and cleaning

Garbage removal

The landlord testified that the tenant left a lot of garbage and they had to make two trips to the landfill. The landlord seeks to recover, \$29.50, in disposal fees, \$40.00 for gas as a round trip to the landfill is a 45 minute drive, and \$51.00 for a day permit to insure their truck. The landlord seeks to recover the total amount of \$120.50.

Carpet replacement

The landlord testified that the tenant also caused damage to the carpet, which were approximately 5 years old at the time of replacement. The landlord stated that they had the carpets replaced with laminate which cost significantly higher than carpet as a result they seek one quarter of the cost of replacement and labour. The landlord stated they also seek compensation for having to take the old carpet to the landfill. The landlord seeks to recover the total cost associated with the carpets in them amount of \$818.36.

Cleaning and repairs

The landlord testified that they seek compensation for having to remove the garbage, fixed the hole in the wall, which had to be filled, sanded and painted and for repairing and painting the broken door frame. The landlord seeks to recover the amount of 18 hours at the rate of \$25.00 per hour. The landlord seeks to recover the amount of \$450.00.

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 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.

Unpaid rent for March 2015

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 landlord was the tenant cheque for March 2015, was returned by the bank due to insufficient funds. I find the tenant has breached section 26 of the Act when they failed to pay rent when due under the tenancy agreement and this has caused losses to the landlord. Therefore, I find the landlord is entitled to recover unpaid rent for March 2015, in the amount of **\$1,375.00**.

Unpaid rent balance of fixed term

In this case, the landlord is claiming for the balance of the fixed term agreement. However, the landlord did not provide a copy of the signed tenancy agreement for my review or consideration. As a result I am unable to determine if the tenancy is a fixed term. Therefore, I dismiss this portion of the landlord's 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.

Garbage removal

I accept the evidence of the landlord that the tenant left garbage behind which had to be removed as this is supported by photographs and receipts. I find the tenant has breached the Act, when they failed to remove their garbage at the end of the tenancy and this caused losses to the landlord. Therefore, I find the landlord is entitled to recover the amount of \$29.77 for disposal fees, \$40.00 for gas, and \$51.00 for a day permit for their truck \$51.00 for the day, for a total amount of **\$120.50**.

Carpet replacement

The evidence of the landlord was that the tenant caused damage to the carpets, which were replaced with laminate flooring.

In this case, I am not satisfied with the evidence presented by the landlord that the tenant is responsible for any of the costs related to the carpets. First, the landlord provided no documentary evidence of the condition of the carpets at the start of the tenancy, such as a move-in condition inspection report. Second, the carpet was replaced with laminate flooring and although the landlord is seeking to recover a quarter of the costs, there is no way for me to determine if that is reasonable as no evidence was presented, such as an estimate for carpet replacement, for me to determine if the amount is reasonable. Third, even if the tenant caused the damage, which I am not satisfied, the landlord would only be entitled to recover the depreciated value. I find the landlord has provided insufficient evidence to support this portion of their claim.

Cleaning and repairs

In this case, I accept the evidence of the landlord that the tenant did not leave the rental unit reasonable clean and caused damage to the wall and door frame. This is supported by photographs. I find the tenant breached the Act, when they failed to leave the rental unit reasonable clean and make the repair to the wall and door frame. I find the amount claimed by the landlord reasonable. Therefore, I find the landlord is entitled to recover the amount of **\$450.00**.

I find that the landlord has established a total monetary claim of **\$1,995.50** comprised of the above described amounts and half the fee \$50.00 paid for this application.

I order that the landlord retain the security deposit of **\$675.00** in partial satisfaction of the claim and I grant the landlord an order under section 67 of the Act for the balance due of **\$1,320.50**.

This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court. The **tenant is cautioned** that costs of such enforcement are recoverable from the tenant

Conclusion

The landlord is granted a monetary order and may keep the security deposit in partial satisfaction of the claim and the landlord is 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: March 15, 2016

Residential Tenancy Branch

