



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Code OPR, MNR, MND, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord filed under the Residential Tenancy Act (the "Act"), for an order of possession, for a monetary order for unpaid rent, and for damages to the unit.

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 February 2, 2016, and were successfully delivered.

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.

Preliminary matters

At the outset of the hearing the landlord requested to amended their application to include loss of rent for February 2016. As rent is the most basic term of a tenancy agreement, I find, pursuant to section 62(3) that the landlord's application is amended to include a claim for loss of February 2016, rent.

At the outset of the hearing the landlord indicated that the tenants vacated the rental unit on February 28, 2016, and an order of possession is no longer required.

Issues to be Decided

Is the landlord entitled to a monetary order for unpaid rent?

Is the landlord entitled to monetary compensation for damages?

Background and Evidence

The tenancy began approximately 3 ½ years earlier. Rent in the amount of \$800.00 was payable on the first of each month. The tenants did not pay a security deposit. The tenancy ended on February 28, 2016.

The landlord claims as follows:

a.	Unpaid rent for January 2016, and February 2016	\$1,600.00
b.	Lawn repair	\$ 100.00
c.	Dehumidifier	\$ 200.00
d.	Paint	\$ 100.00
e.	Trees	\$ 100.00
f.	Filing fee	\$ 100.00
	Total claimed	\$2,200.00

Unpaid rent

The landlord testified that the tenants failed to pay rent for January 2016, and were served with a notice to end tenancy. The landlord stated the tenants did not pay the outstanding rent and then failed to pay rent for February 2016. The landlord seeks to recover unpaid rent for January 2016, and February 2016, in the amount of \$1,600.00.

Lawn repair

The landlord testified that the tenants removed a portion of the lawn that was 10 meters by 14 meters as they were using this area to sit and have fires. The landlord stated that the tenants were given permission to have a few raised garden beds in the area, but did not have permission to remove the grass. The landlord stated that they have not been able to replace the grass, due to the weather condition; however, the labour, new seed and fertilizer will cost approximately \$100.00.

Dehumidifier

The landlord acknowledged that the tenants are not responsible for the cost of the dehumidifier.

Paint

The landlord testified that the tenants caused damage to the interior of the rental unit as they refused to use the dehumidifier. The landlord stated that the upper portion of walls were discolored from the moisture and the mildew. The landlord seeks to recover the cost to make the repairs in the amount of \$100.00.

Trees

The landlord testified that the tenants cut branches of the large cedar trees up to about 12 feet in height, as the tenants did not want to catch the tree on fire when they had their fires. The landlord stated as a result, they have to buy some small seedlings to fill in the areas where the limbs were removed. 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 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-complying 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

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.*

I accept the unopposed evidence of the landlord that the tenants did not pay any rent for January 2016, and February 2016. I find the tenants have 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 the above mentioned dates in the amount of **\$1,600.00**.

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.

Lawn repair

I accept the unopposed evidence of the landlord that the tenants caused damage to the lawn by removing the grass. I find the tenants breached the Act when they failed to make the necessary repairs to the lawn and this caused losses to the landlord. I find the amount claimed by the landlord reasonable based on the size of the area, the labour, and supplies needed to make the necessary repair. Therefore, I find the landlord is entitled to recover the amount of **\$100.00**.

Dehumidifier

In this case, the landlord was claiming the cost of the dehumidifier; however, the tenants are not responsible for the cost of the appliance. Therefore, I dismiss this portion of the landlord's claim.

Paint

I accept the unopposed evidence of the landlord that the tenants did not use the dehumidifier provided and as a result excess moisture caused mildew and staining on the upper edge of the walls. I find the tenants breached the Act when they failed to make the necessary repairs and this caused losses to the landlord. I find the amount claimed by the landlord for paint and labour reasonable. Therefore, I find the landlord is entitled to recover the amount of **\$100.00**.

Trees

I accept the unopposed evidence of the landlord that the tenants cut branches from the cedar trees without their consent up to approximately 12 feet height leaving the lower portion open. I find the tenants breached the Act when they cut the trees without the

consent of the landlord. Therefore, I find the landlord is entitled to recover the amount of **\$100.00**.

I find that the landlord has established a total monetary claim of **\$2,000.00** comprised of the above described amounts and the \$100.00 fee paid for this application. I grant the landlord an order under section 67 of the Act.

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

Conclusion

The landlord is granted a monetary order.

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 17, 2016

Residential Tenancy Branch