



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding ACTION PROPERTY MANAGEMENT
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNR MNSD MNDC FF

Introduction

This hearing dealt with an Application for Dispute Resolution (the “Application”) by the landlord under the *Residential Tenancy Act* (the “Act”) for a monetary order authority to keep all or part of the security deposit, and to recover the cost of the filing fee.

An agent for the landlord (the “agent”) and the tenant appeared at the teleconference hearing and gave affirmed testimony. During the hearing the parties were given the opportunity to provide their evidence orally and ask questions about the hearing process. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

The tenant confirmed having received the landlord’s evidence prior to the hearing and that he had the opportunity to review that evidence prior to the hearing. The tenant also confirmed that he did not submit any evidence in response to the landlord’s Application.

Preliminary and Procedural Matter

At the outset of the hearing, in reviewing the “Details of the Dispute” section of the Application, I find that the landlord was also clearly seeking a monetary order for unpaid rent or utilities and for money owed or compensation for damages or loss under the *Act*. As result, I amend the landlord’s Application to include what is described above pursuant to section 64(3) of the *Act*.

Issues to be Decided

- Is the landlord entitled to a monetary order under the *Act*, and if so, in what amount?
- What should happen to the tenant’s security deposit under the *Act*?

Background and Evidence

The written tenancy agreement was submitted in evidence which indicates that a month to month tenancy began on October 1, 2015. Monthly rent in the amount of \$1,400.00 was due on the first day of each month. A security deposit of \$700.00 was paid by the tenant, which the landlord continues to hold.

The landlord has applied for a monetary claim in the amount of \$1,595.00 comprised of the following:

ITEM DESCRIPTION	AMOUNT CLAIMED
1. Loss of December 2015 rent	\$1,400.00
2. Suite cleaning	\$35.00
3. Carpet cleaning	\$160.00
TOTAL	\$1,595.00

The landlord submitted an incoming condition inspection report in evidence but confirmed that when the tenant moved into the rental unit, a new condition inspection report was not completed. As a result, the condition inspection report submitted in evidence was completed with a different renter who had moved in on June 12, 2015 which was almost four months before the tenant moved in. The tenant testified that he does not agree with any portion of the landlord's monetary claim.

Regarding item #1, the agent testified that the tenant failed to provide written notice that he was vacating the rental unit. The tenant claims that he served his written one month notice on October 30, 2015 to end his month to month tenancy effective November 30, 2015 but does not recall who he served and provided no copy of this one month notice in evidence. The landlord is seeking loss of December 2015 rent as a result in the amount of \$1,400.00 due the tenant failing to provide one month's written notice as required by the *Act*.

Regarding item #2, the landlord has claimed \$35.00 for suite cleaning which the tenant stated was not required. The agent confirmed that no receipts or invoices were submitted to support the amount of \$35.00 being claimed.

Regarding item #3, the landlord has claimed \$160.00 for carpet steam-cleaning. The agent confirmed that no receipts or invoices were submitted to support the amount of \$160.00 being claimed. The tenant denies that the carpets required steam-cleaning.

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on the balance of probabilities, I find the following.

Test for damages or loss

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in sections 7 and 67 of the *Act*. Accordingly, an applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did what was reasonable to minimize the damage or loss.

In this instance, the burden of proof is on the landlord to prove the existence of the damage/loss and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the tenant. Once that has been established, the landlord must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the landlord did what was reasonable to minimize the damage or losses that were incurred.

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.

Item 1 – The landlord has claimed \$1,400.00 for loss of December 2015 rent due to the tenant failing to provide one month's written notice to the landlord in accordance with the *Act*. Section 45 of the *Act* applies and states:

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.**

...

(4) **A notice to end a tenancy given under this section must comply with section 52** *[form and content of notice to end tenancy]*.

[reproduced as written]

As the tenant failed to provide a copy of the one month's written notice and could not recall who he served with the one month notice, I prefer the testimony of the agent over that of the tenant. I find there is insufficient evidence before me to prove a one month notice was served by the tenant and as a result, I find the tenant breached section 45(1) of the *Act* by failing to provide notice in accordance with the *Act*. Therefore, I find the landlord has met the burden of proof and is entitled to **\$1,400.00** for loss of December 2015 rent.

Items 2 and 3 – The agent confirmed that when the tenant moved into the rental unit, an incoming condition inspection report was not completed with the tenant and that a previous condition inspection report for a different renter who had moved in almost four months earlier was relied upon. As a result, **I caution** the landlord comply with section 23 of the *Act* and ensure that an incoming condition inspection report is completed for all new tenants. As a result, I afford little weight to the condition inspection report submitted in evidence. Furthermore, the landlord failed to submit photographic evidence, invoice or receipts to support these portions of their claim. Furthermore, as the landlord has the burden of proof, I find that considering the tenant attended the hearing and disputed the claims of the landlord, I find the landlord has failed to satisfy the test for damages or loss and has not met the burden of proof as a result. **I dismiss** items 2 and 3 due to insufficient evidence, **without leave to reapply.**

As the landlord was successful with the majority of the amount of their monetary claim, **I grant** the landlord the recovery of the filing fee in the amount of **\$50.00**. The landlord continues to hold the tenant's security deposit of \$700.00 which has accrued \$0.00 in interest to date.

Monetary Order – **I find** that the landlord has established a total monetary claim in the amount of **\$1,450.00** comprised of \$1,400.00 for item 1 plus the recovery of the cost of the \$50.00 filing fee. I find this claim meets the criteria under section 72(2)(b) of the *Act* to be offset against the tenant's security deposit of \$700.00. **I authorize** the landlord to

retain the tenant's full security deposit of \$700.00 in partial satisfaction of the landlord's claim, and I grant the landlord a monetary order under section 67 for the balance owing by the tenant to the landlord in the amount of **\$750.00**.

Conclusion

The landlord's claim was partially successful.

The landlord has established a total monetary claim in the amount of \$1,450.00 as described above. The landlord has been authorized to retain the tenant's full security deposit of \$700.00 in partial satisfaction of the landlord's monetary claim. The landlord has been granted a monetary order under section 67 for the balance owing by the tenant to the landlord in the amount of \$750.00. This order must be served on the tenant and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: July 11, 2016

Residential Tenancy Branch