



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MNDC, MNSD, FF

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the Act) for:

- a monetary order for unpaid rent and for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover their filing fee for this application from the tenant pursuant to section 72.

The landlord, L.P. (the landlords) attended the hearing via conference call as agent for both the landlords, F.C. and M.R. and provided affirmed testimony. Both tenants attended the hearing via conference call and provided affirmed testimony. The tenants both confirmed that the landlords served them with the amended notice of hearing package and the submitted documentary evidence via Canada Post Registered Mail on January 7, 2016. Both parties confirmed that the tenants served the landlords with their submitted documentary evidence in person on June 28, 2016. As both parties have attended and have confirmed receipt of the amended notice of hearing package and the submitted documentary evidence, I am satisfied that both parties have been properly served as per sections 88 and 89 of the Act.

Issue(s) to be Decided

Are the landlords entitled to a monetary order for unpaid rent, for money owed or compensation for damage or loss and recovery of the filing fee?

Are the landlords entitled to retain all or part of the security and pet damage deposits?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

This tenancy began on August 1, 2015 as shown by the submitted copy of the signed tenancy agreement dated May 28, 2015. The monthly rent was \$1,100.00 payable on

the 1st day of each month. A security deposit of \$550.00 and a pet damage deposit of \$550.00 were paid. The landlords currently hold both the security and pet damage deposits.

The landlords seek a monetary claim of \$1,900.00 which consists of:

\$1,100.00	Rent (Loss of Rental Income- December)
\$200.00	Holes in Walls
\$200.00	Property Management Fee
\$200.00	Grout Damage
\$200.00	Improperly Repaired Damage (Tiles)

The landlords provided affirmed testimony that the tenants failed to provide proper notice to vacate the tenancy. The landlords stated that notice to vacate the rental premises was received on November 2, 2015 via Facebook to end the tenancy on November 29, 2015. The tenants confirmed that notice was not officially provided, but that the landlord was notified via Facebook on November 2, 2015 to end the tenancy on November 29, 2015. The tenants both stated that the signed tenancy agreement does not provide for any contact information (mailing or telephone numbers). Both parties confirmed that primary communication was via Facebook and through email for payments of rent. The landlords stated that they accepted the notice to vacate and immediately began to re-advertise the rental premises. The landlords stated that a new tenant was obtained for January 1, 2016.

The landlords also seek recovery of a property management fee of \$200.00 incurred as the tenants breached the tenancy by prematurely ending the tenancy before the end of the fixed term. The tenants dispute this claim stating that there was no end term for the tenancy agreement. Both parties confirmed that a review of the signed tenancy agreement shows that no end term was indicated. The landlords claimed that the intent of the tenancy agreement was for 1 year (July 31, 2016).

The landlord seeks recovery of damage repair costs based upon a service estimate dated December 9, 2015 from their contractor totalling, \$647.93. The tenants confirmed that they ordered cable service and allowed holes to be cut out of the walls by the technicians, but that the tenants disputed the repair costs claiming that it is excessive. The landlords rely upon the service estimate stating that the work listed was performed and that the contractor was paid for all of the listed services totalling, \$647.93. The landlords clarified that the invoice also includes repair of Grout damage and damaged tiles in the shower.

The landlord has also submitted in support of their application:

18 photographs of the rental unit at the end of tenancy

A copy of an invoice dated December 1, 2015 for a "Re-renting Fee"

A copy of a "Service Estimate" dated December 9, 2015

Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. When a party makes a claim for damage or loss the burden of proof lies with the applicant to establish their claim. To prove a loss the applicant must satisfy the following four elements:

1. Proof that the damage or loss exists,
2. Proof that the damage or loss occurred due to the actions or neglect of the other party in violation of the Act, Regulation or tenancy agreement,
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage, and
4. Proof that the applicant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

The landlords have provided undisputed affirmed testimony that the "service estimate" dated December 1, 2015 for work was performed and paid for. I accept on a balance of probabilities the landlords evidence that \$647.93 was paid for the combined work to repair holes in walls, grout damage and repair of tiles in the shower.

Compensation: Loss of Rental Income

On the landlords first item of claim, I find that although there was no mailing address or contact information located on the signed tenancy agreement, both parties accepted that primary communication was via email and Facebook. Both parties confirmed in their submissions that communication was carried out through Facebook and that rent was paid via email transfer. As such, I accept the undisputed evidence of both parties that the tenants provided notice to vacate the rental premise on November 2, 2015 to end the tenancy on November 29, 2015. The landlord provided evidence that she accepted this by immediately trying to advertise the rental to re-rent. Section 45 (2) of the Act states a tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy effective on the date that is not earlier than one month after the date the landlord receives the notice. In this case, it is clear that the tenant failed to do so by giving notice on November 2, 2015 to end the tenancy on November 29, 2015. Residential Tenancy Branch Policy Guideline #5, Duty to minimize loss states,

In circumstances where the tenant ends the tenancy agreement contrary to the provisions of the Legislation, the landlord claiming loss of rental income must make reasonable efforts to re-rent the rental unit or site at a reasonably economic rent. Where the tenant gives written notice that complies with the Legislation but specifies a time that is earlier than that permitted by the

Legislation or the tenancy agreement, the landlord is not required to rent the rental unit or site for the earlier date. The landlord must make reasonable efforts to find a new tenant to move in on the date following the date that the notice takes legal effect. Oral notice is not effective to end the tenancy agreement, and the landlord may require written notice before making efforts to re-rent. Where the tenant has vacated or abandoned the rental unit or site, the landlord must try to rent the rental unit or site again as soon as is practicable.

In this case, I find based upon the undisputed affirmed evidence of the landlord that upon being notified on November 2, 2015, the landlord immediately began to advertise the unit for rent. Unfortunately the landlords were not able to re-rent the unit until January 1, 2016. On this basis, I find that the landlord has established a claim for loss of rental income of \$1,100.00.

Compensation: Property Management Fee

In this case, the landlords seek recovery of \$200.00 for a property management fee paid to have a third party to advertise and obtain a new tenant. The landlords have submitted a copy of an invoice dated December 1, 2015 showing a charge of \$200.00 for re-renting. Both parties agreed that the tenants had agreed to compensate the landlords for the cost of re-renting the unit, but the tenants both argued that this amount seems excessive. Both parties agreed that no actual amount was agreed upon. The landlords stated that the tenants' had prematurely ended the tenancy requiring that a replacement tenant be found before they were prepared to do so. The tenants confirmed that they were willing to compensate the landlords to assist in the re-renting process, but that they were disputing the actual amount of \$200.00. . I accept the undisputed affirmed evidence of both parties and find that the landlords suffered a cost of re-renting the rental unit of \$200.00. The landlords have provided an invoice dated December 1, 2015 with an actual amount of the cost for re-renting. In the absence of any other evidence to the contrary, I accept that the landlords incurred a cost of \$200.00 and that the landlords have established a claim for \$200.00 to re-rent the premises.

Compensation: Damages

The landlords seek recovery of damage repair costs totalling, \$600.00 consisting of:

\$200.00	Holes in Walls (Cable)
\$200.00	Grout Damage
\$200.00	Improperly Repaired Damages (Tiles)

Both tenants provided undisputed affirmed evidence that they allowed holes to be made in the walls for the installation of cable service. Both tenants disputed the landlords' claims that grout damage was caused by them. The tenants provided affirmed testimony that prior to the end of tenancy there was a water leak that probably caused

the grout damage. The landlords dispute this referring to photographs #13 taken of the grout damage. The landlords stated that the tile damage was improperly repaired and that there were two loose tiles as shown in photographs #11 and #12. The landlords also stated that the contractor had to pull out up to 6 other tiles to properly repair the damage as those tiles had been improperly installed. I accept the undisputed evidence of both parties and find that the landlords have established a claim for \$200.00 in wall repairs based upon the tenants' direct testimony confirming that they had allowed a cable service to make holes. I find on a balance of probabilities that the landlords have established a claim for the grout damage. The tenants disputed and provided evidence that the grout damage was due to a water leak caused by the tenants. The landlord confirmed that the grout damage was caused to excessive water. As such, I find that the landlords have established a claim for the \$200.00 in grout damage. I also accept the undisputed affirmed evidence of the landlord that the tenants had improperly repaired the tiles as shown in photographs #11 and #12. I also accept the landlords' undisputed affirmed evidence that the contractor in order to properly repair the tiles had to remove the additional pieces to properly repair and re-install the tiles. The landlords have established a claim for \$200.00 for improperly repaired damages (tiles).

Having been successful in their application, I grant the landlords recovery of their \$50.00 filing fee.

The landlords applied to retain all or part of both the \$550.00 security and the \$550.00 pet damage deposits. I grant an order allowing the landlords to retain both in partial satisfaction of the claim.

Conclusion

I issue a monetary order for \$850.00 under the following terms:

\$1,100.00	Rent (Loss of Rental Income- December)
\$200.00	Holes in Walls
\$200.00	Property Management Fee
\$200.00	Grout Damage
\$200.00	Improperly Repaired Damage (Tiles)
\$1,900.00	Total Claims
\$50.00	Recovery of Filing Fee
-\$1,100.00	Offset Security/Pet Deposits
\$850.00	Total Monetary Order Granted

This order must be served upon the tenants. Should the tenants fail to comply with this order, this order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

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: July 08, 2016

Residential Tenancy Branch