



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNR, 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 damage to the unit, site or property 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;
- authorization to recover her filing fee for this application from the tenant pursuant to section 72.

The landlord attended the hearing via conference call and provided undisputed affirmed testimony. The tenants did not attend or submit any documentary evidence. The landlord stated that the tenants were served with the notice of hearing package and the submitted documentary evidence via Canada Post Registered Mail on March 18, 2016 via the tenants' lawyer. The landlord clarified that this was served in this manner at the tenants' lawyer's request. The landlord provided in her direct testimony the Canada Post Registered Mail Customer Receipt Tracking number as confirmation of service. The landlord stated that an online search showed that the package was received 2 days later. I accept the undisputed affirmed evidence of the landlord and find that the tenants were properly served as per sections 88 and 89 of the Act. The tenants are deemed to have been served 5 days later as per section 90 of the Act.

Issue(s) to be Decided

Is the landlord entitled to a monetary order for unpaid rent, for damage to the unit, site or property and recovery of the filing fee?

Is the landlord entitled to retain all or part of the security deposit?

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 April 15, 2013 on a month-to-month basis as shown by the submitted copy of the signed tenancy agreement dated March 25, 2013. The monthly rent is \$2,600.00 payable on the 15th day of each month. A security deposit of \$1,300.00 was paid on March 25, 2013.

The landlord seeks a monetary claim of \$16,807.42 which consists of:

\$7,800.00	Unpaid Rent
\$5,400.00	Labour
\$3,607.42	Bills

The landlord provided undisputed affirmed evidence that the tenants vacated the rental premises on April 15, 2014 without notice and failed to pay the rent. The landlord stated that the tenants left the rental unit dirty and damaged which required extensive cleaning and repairs as well as yardwork.

The landlord has submitted in support of the application:

- A copy of the signed tenancy agreement dated March 25, 2013.
- A copy of a completed condition inspection report for the move-in dated March 25, 2013.
- A copy of a two page "Time Sheet" detailing the 216 hours of labour by the landlord.
- A copy of a two page spreadsheet detailing the expenses incurred to clean and repair the damaged left by the tenants.
- A copy of twenty-two pages of receipts and invoices for expenses incurred.
- A copy of 39 photographs showing the condition of the rental unit at the end of tenancy.

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. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. In this case, the onus is on the landlord to prove on the balance of probabilities that the tenant caused the damage and that it was beyond reasonable wear and tear that could be expected for a rental unit of this age.

I accept the undisputed affirmed evidence of the landlord and find that a monetary claim of \$16,807.42 has been established. The landlord has provided undisputed affirmed evidence that the tenants failed to provide proper notice to end the tenancy suffering a loss of rent for the period April 15, 2014 to May 14, 2014. As well the landlord has provided undisputed affirmed

evidence that the premises was left damaged and dirty in which she suffered a loss of rental income for two additional months as the landlord was making repairs between April 15, 2014 and July 15, 2014. The landlord stated that the rental unit was not habitable until cleaning and repairs were completed. The landlord has provided submissions detailing that the tenants left the rental unit damaged and dirty requiring extensive repairs and cleaning. The landlord's detailed time sheet shows that 216 hours of labour was performed by the landlord to repair and clean the rental premises. The landlord has also provided 39 photographs of the rental unit at the end of the tenancy in comparison with the completed condition inspection report for the move-in at the beginning of the tenancy. Based upon the above reasons, I find that the landlord has established a monetary claim of \$16,807.42.

The landlord applied to keep the tenant's security deposit. I allow the landlord to retain the security deposit in partial satisfaction of the monetary award. No interest is payable over this period.

As the landlord was successful in this application, I find that the landlord is entitled to recover the \$100.00 filing fee paid for this application.

Conclusion

I grant a monetary order to the landlord for \$15,607.42 under the following terms:

\$16,708.42	Landlord's Monetary Award
-\$1,300.00	Offset Security Deposit
\$100.00	Recovery of Filing Fee
\$15,607.42	Total Monetary Order Granted to Landlord

The landlord is provided with this order in the above terms and the tenant(s) must be served with this order as soon as possible. Should the tenant(s) fail to comply with this order, this order may be filed in the Small Claims Division of the Provincial Court and enforced as orders 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: August 4, 2016

Residential Tenancy Branch

