



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

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

DECISION

Dispute Codes MND, MNR, MNSD, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord for a monetary order for unpaid rent, for damages to the unit and an order to retain the security deposit in partial satisfaction of the claim and to recover the filing fee from the tenant.

The landlord and their agent 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's agent testified the Application for Dispute Resolution and Notice of Hearing were sent by registered mail on February 19, 2016, a Canada post tracking number was provided as evidence of service. The agent stated that the package was successfully delivered on February 21, 2016, to the tenant.

I find that the tenant has been duly served in accordance with the Act.

The landlord's agent 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, 2013. Rent in the amount of \$2,500.00 was payable on the first of each month. A security deposit of \$1,250.00 was paid by the tenant. The tenancy ended on December 7, 2015.

The landlord claims as follows:

a.	Unpaid rent for December 2015	\$2,500.00
b.	Loss of rent for January 2016	\$2,500.00
c.	Damages	\$ 488.25
d.	Filing fee	\$ 100.00
	Total claimed	\$5,588.25

The landlord's agent testified that the tenant did not pay December 2015, rent when due under the terms of the tenancy agreement. The landlord seeks to recover unpaid rent for December 2015, in the amount of \$2,500.00.

The landlord's agent testified that on December 7, 2015, the tenant sent them an email which indicated that they had vacated the rental unit. The agent stated the tenant did not give the landlord the required notice to end the tenancy.

The landlord's agent testified that they advertised the rental unit and had approximately 15 potential renters view the rental unit; however, they were able to find a new renter for the month of January 2016. The landlord seeks to recover loss of rent for January 2016, in the amount of \$2,500.00.

The landlord's agent testified that the tenant also left garbage behind and there were multiple screws left in the walls, which had to be removed and the wall repaired. Filed in evidence is a detail invoice of work completed. The landlord seeks to recover the cost of making repairs in the amount of \$488.25.

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.

Rent

Section 26 of the Residential Tenancy Act states:

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's agent was the tenant did not pay rent owed for December 2015. 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 December 2015, in the amount of **\$2,500.00**.

Loss of rent for January 2016

Section 45 of the Residential Tenancy Act 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

The evidence of the landlord's agent was the tenant did not give notice to end the tenancy until December 7, 2015, when they sent an email indicating that they had vacated the rental unit.

Under section 45(1) of the Act the tenant was required to provide the landlord with at least one month notice to end the tenancy. I find that the tenant have breached the Act as the earliest date they could have legally ended the tenancy was January 30, 2016.

Since the tenant did not comply with the terms of the tenancy agreement or the Act the landlord suffered a loss of rent for January 2016; the landlord is entitled to an amount sufficient to put the landlord in the same position as if the tenant had not breached the tenancy agreement or Act. This includes compensating the landlord for any loss of rent up to the earliest time that the tenant could have legally ended the tenancy.

However, under section 7(2) of the Act, the party who claims compensation for loss that results from the non-complying party must do whatever is reasonable to minimize the loss.

In this case, the evidence of the landlord's agent was that they advertised the rental unit and had 15 potential renters; however, a new renter was not found until February 1, 2016. I find the landlord made reasonable efforts to minimize the loss. Therefore, I find the landlord is entitled to recover loss of rent for January 2016, in the amount of **\$2,500.00.**

Damages

Section 37 of the Residential Tenancy Act states:

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.

I accept the landlord's agent unopposed evidence that the tenant left garbage behind, and screws in the walls. The invoice filed in evidence supports this. I find the tenant breached the Act when they failed to make the repairs or remove their garbage. Therefore, I find the landlord is entitled to recover the cost of damages in the amount of **\$488.25.**

I find that the landlord has established a total monetary claim of **\$5,588.25** comprised of the above described amounts and the \$100.00 fee paid for this application.

I order that the landlord retain the security deposit and interest of **\$1,250.00** in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of **\$4,338.25**.

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 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: September 30, 2016

Residential Tenancy Branch