



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND MNR MNSD MNDC O FF

Introduction

This hearing was convened to hear matters pertaining to an Application for Dispute Resolution filed by the Landlords on January 22, 2016. The Landlords filed seeking a Monetary Order for: unpaid rent and/or utilities; damages to the unit, site or property; money owed or compensation for damage or loss under the *Act*, Regulation, or tenancy agreement; to keep the security deposit; for other reasons; and to recover the cost of the filing fee.

The hearing was conducted via teleconference and was attended by both Landlords and their Agent. The Agent provided affirmed testimony and presented all evidence on behalf of the Landlords. The Agent also translated information and presented that information on behalf of the Landlords. Therefore, for the remainder of this decision, terms or references to the Landlords importing the singular shall include the plural and vice versa, except where the context indicates otherwise.

No one was in attendance at the hearing on behalf of the Tenant. The Landlord provided affirmed testimony that the Tenant was served notice of this application and this hearing by registered mail January 25, 2016. Canada Post tracking receipts were submitted in the Landlords' oral submission. The Landlord stated she had confirmed the packages were signed received on January 29, 2016 as per the Canada Post tracking website.

Section 89(1) of the *Act* stipulates that an application for dispute resolution or a decision of the director to proceed with a review under Division 2 of Part 5, when required to be given to a landlord, must be given in one of the following ways:

- (a) by leaving a copy with the person;
- (b) if the person is a landlord, by leaving a copy with an agent of the landlord;
- (c) by sending a copy by registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord;

Based on the undisputed evidence of the Landlords, I find the Tenant was sufficiently served notice of this application and hearing, in accordance with Section 89(1) (c) of the Act on January 29, 2016. Accordingly, the hearing continued to hear the undisputed evidence of the Landlords in absence of the Tenant.

Issue(s) to be Decided

Have the Landlords proven entitlement to monetary compensation?

Background and Evidence

The Landlords submitted evidence that the Tenant entered into a fixed term written tenancy agreement that began on June 1, 2015 and was set to end six months later. Rent of \$750.00 plus \$100.00 utilities was payable on or before the first of each month. On or before June 1, 2015 the Tenant paid \$375.00 as the security deposit. A condition inspection report form was completed at move in and at move out; however, those reports were not signed by the Tenant.

At the end of September 2015 the Landlords served the Tenant a 2 Month Notice to end tenancy for landlord's use of the property. That Notice had an effective date of December 1, 2015. The Tenant vacated the property December 1, 2015 leaving the key inside and the rental unit unlocked. The Tenant was not required to pay rent for November 2015 as that was her compensation for being served the 2 Month Notice. The Landlords stated the Tenant was still required to pay for the monthly utilities of \$100.00 for November 2015; which they now apply for payment of those utilities.

The Landlords asserted the Tenant left the rental unit dirty; debris scattered about; and the unit had sustained damage. The Landlords now seek \$4,040.00 compensation which is comprised of: \$200.00 to remove the debris and garbage; \$160.00 to clean the rental unit; \$180.00 to clean the carpets; \$3,000.00 to remove and replace the laminate flooring that sustained water damage; \$350.00 to repaint the bathroom that had writing on the walls; and \$50.00 to repair the broken closet doors.

Analysis

After careful consideration of the foregoing, documentary evidence, and on a balance of probabilities I find as follows:

Section 7 of the Act provides as follows in respect to claims for monetary losses and for damages made herein:

- 7(1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

- 7(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

Section 67 of the Residential Tenancy Act states that without limiting the general authority in section 62(3) [*director's authority*], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

I accept the Landlords' undisputed evidence the Tenants failed to pay the \$100.00 utilities that was due November 1, 2015 in full in accordance with the tenancy agreement. Accordingly, I grant the Landlords' claim for unpaid utilities in the amount of **\$100.00**.

Section 37(2) of the Act provides that when a tenant vacates a rental unit the tenant must leave the rental unit reasonably clean and undamaged except for reasonable wear and tear; and must return all keys to the Landlord.

Based the undisputed evidence, I accept the Landlords' submission that at the end of the tenancy the Tenant left the rental unit keys inside; the door was unlocked; and the unit was left unclean, scattered with debris, and damaged. Therefore, I find the Tenant breached section 37 of the Act. In addition, I find the Tenant's breach caused the Landlords to suffer a loss of the following: \$200.00 to remove the debris and garbage; \$160.00 to clean the rental unit; \$180.00 to clean the carpets; \$3,000.00 to remove and replace the laminate flooring that sustained water damage; \$350.00 to repaint the bathroom that had writing on the walls; and \$50.00 to repair the broken closet doors. Accordingly, I grant the undisputed application for cleaning and repairs in the amount of **\$4,040.00** pursuant to section 67 of the Act.

Section 72(1) of the Act stipulates that the director may order payment or repayment of a fee under section 59 (2) (c) [*starting proceedings*] or 79 (3) (b) [*application for review of director's decision*] by one party to a dispute resolution proceeding to another party or to the director.

The Landlords have succeeded with their application; therefore, I award recovery of the **\$100.00** filing fee, pursuant to section 72(1) of the Act.

The Residential Tenancy Branch interest calculator provides that no interest has accrued on the \$375.00 security deposit since June 2015.

I find this monetary award meets the criteria under section 72(2)(b) of the Act to be offset against the Tenants' security deposit plus interest as follows:

Unpaid November 2015 Utilities	\$ 100.00
Cleaning costs and repair costs	4,040.00
Filing Fee	<u>100.00</u>
SUBTOTAL	\$4,240.00
LESS: Security Deposit \$375.00 + Interest \$0.00	<u>- 375.00</u>
Offset amount due to the Landlords	<u>\$3,865.00</u>

The Tenant is hereby ordered to pay the Landlords the offset amount of \$3,865.00, forthwith.

In the event the Tenant does not comply with the above order, The Landlords have been issued a Monetary Order in the amount of **\$3,865.00** which may be enforced through Small Claims Court upon service to the Tenant.

Conclusion

The Landlords have succeeded with their application and were awarded monetary compensation of \$4,240.00 which was offset against the Tenant's security deposit leaving a balance owed to the Landlords of **\$3,865.00**.

This decision is final, legally binding, 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: September 06, 2016

Residential Tenancy Branch