



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND MNR MNSD MNDC FF

Introduction

This hearing was convened to hear matters pertaining to an Application for Dispute Resolution filed by the Landlords on February 29, 2016. The Landlords filed seeking a Monetary Order for: damages to the unit, site or property; unpaid rent or utilities; money owed or compensation for damage or loss under the *Act*, Regulation, or tenancy agreement; to keep the security deposit; and to recover the cost of the filing fee.

The hearing was conducted via teleconference and was attended by one of the applicant Landlords who provided affirmed testimony she would be representing both Landlords in this hearing. 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 on behalf of the Tenants.

On March 01, 2016 the Landlords were issued a Decision granting a substitute service order which included, in part, as follows:

Having reviewed the submissions of the landlord, I order that she may serve the tenant with the Hearing Package by sending the Hearing Package by email to the same email address which the tenant uses when communicating with the landlord. Prior to the hearing, the landlord must file into evidence a copy of the email message to the tenant and confirmation from the tenant that the package was received by email.

[Reproduced as written p 1 para 3]

On July 06, 2016 the Residential Tenancy Branch (RTB) received 49 pages of documentary and photographic evidence from the Landlords. That evidence included copies of the Landlord's March 3, 2016 email service of their application for Dispute Resolution and notice of hearing documents to the Tenants. The Landlords also provided copies of the Tenants' March 5, 2016 email response confirming receipt of the application and hearing documents.

Based on the undisputed evidence of the Landlords, I find the Tenants were sufficiently served notice of this application and hearing, in accordance with the substitute service order issued March 1, 2016. Accordingly, the hearing continued to hear the undisputed evidence of the Landlords in absence of the Tenants.

Issue(s) to be Decided

Have the Landlords proven entitlement to monetary compensation for loss of rental income; unpaid utilities; damage to rental unit; and debris removal?

Background and Evidence

The Landlord submitted evidence that the Tenants entered into a fixed term written tenancy agreement that began on June 1, 2015 and was not set to end until May 31, 2016. Rent of \$1,800.00 was payable on or before the first of each month. On May 5, 2015 the Tenants paid \$900.00 as the security deposit plus \$100.00 as the pet deposit.

A move in condition inspection report was completed and signed by both parties on May 27, 2015. A move out condition inspection report was completed in the presence of both parties on February 28, 2016; however, the Landlord submitted that the Tenants refused to sign that report.

On February 5, 2016 the Landlords received a written notice to end tenancy from the Tenants. That notice indicated that the Tenants' notice would be effective February 28, 2016. The Landlord now seeks \$2,592.77 which is comprised of: \$292.77 natural gas utilities; \$500.00 yard repairs; \$900.00 repairs to the deck and debris removal; and \$900.00 for half a month's loss of rent for the period of February 28, 2016 to March 14, 2016. The Landlord testified the unit was re-rented as soon as possible on March 15, 2016.

The Landlord testified the Tenants ended their tenancy with short notice leaving the rental unit requiring repairs and without paying the natural gas utilities. The Landlord submitted evidence that the Tenants caused damaged to the back yard deck by removing railings; changing the stairs; and installing ceramic tile over the wood planks. In addition, there was evidence of damage caused to the yard, possibly in part by the Tenants' large dog; and the Tenants had removed the hot water tank.

The Landlord clarified that the Tenants had removed the natural gas hot water tank after it had allegedly broken and replaced it with an electric hot water tank. She stated that when the Tenants moved out they took the electric hot water tank with them. The Landlord asserted the Tenants failed to put the natural gas utilities in their name and continued to use the natural gas furnace without paying the utility bill as required by the tenancy agreement.

Analysis

The *Residential Tenancy Act* (the *Act*) and the Regulations stipulate provisions relating to these matters 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* provides 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.

Section 45 (2) of the *Act* stipulates that a tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that is not earlier than one month after the date the landlord receives the notice, and is not earlier than the date specified in the tenancy agreement as the end of the tenancy.

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.

Section 21 of the Regulations provides that In dispute resolution proceedings, a condition inspection report completed in accordance with this Part is evidence of the state of repair and condition of the rental unit or residential property on the date of the inspection, unless either the landlord or the tenant has a preponderance of evidence to the contrary.

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

I accept the Landlords' undisputed evidence the Tenants ended their tenancy February 28, 2016 prior to the May 31, 2016 end of their fixed term tenancy; which I find to be in breach of section 45 of the *Act*. I accept the submissions that notwithstanding the Landlords' actions to minimize their loss by re-renting the unit as soon as possible, the Tenants' breach caused the Landlords to suffer a loss of half a month's rent.

Accordingly, I grant the application for loss of rent in the amount of **\$900.00**, pursuant to section 67 of the *Act*.

The tenancy agreement stipulated electricity and heat were not included in the payment of rent. Accordingly, I accept the undisputed evidence the Tenants were required to pay the natural gas utility costs and I grant the application in the amount of **\$292.77**, pursuant to section 67 of the *Act*.

In addition, I accept the Landlords' undisputed evidence that the Tenants left the rental unit requiring repairs and debris removal. Therefore, I find the Tenants breached section 37 of the *Act*. In addition, I find the Tenants' breach caused the Landlords to suffer a loss of \$500.00 for yard repairs and \$900.00 for deck repairs and debris removal. Accordingly, I grant the undisputed application for repairs and debris removal in the amount of **\$1,400.00**.

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 \$900.00 security deposit or the \$100.00 pet deposit since May 5, 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 as follows:

Loss of rent March 1-14, 2016	\$ 900.00
Unpaid natural gas utilities	292.77
Repairs & debris removal	1,400.00
Filing Fee	<u>100.00</u>
SUBTOTAL	\$2,692.77
LESS DEPOSITS: Security \$900.00 + Pet \$100.00	<u>-1,000.00</u>
Offset amount due to the Landlords	<u>\$1,692.77</u>

The Tenants are hereby ordered to pay the Landlords the offset amount of \$1,692.77, forthwith.

In the event the Tenants do not comply with the above order, The Landlords have been issued a Monetary Order in the amount of **\$1,692.77** which may be enforced through Small Claims Court upon service to the Tenants.

Conclusion

The Landlords have succeeded with their application and were awarded monetary compensation of \$2,692.77 which was offset against the Tenants' security and pet deposits leaving a balance owed to the Landlords of **\$1,692.77**.

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 29, 2016

Residential Tenancy Branch