



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MND, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord filed under the Residential Tenancy Act (the “Act”), for a monetary order for money owed or compensation under the Act, for damages to the unit, for an order to retain the security deposit in partial satisfaction of the claim and to recover the filing fee from the tenants.

The landlord attended the hearing. As the tenants did not attend the hearing, service of the Notice of Dispute Resolution Hearing was considered.

The Residential Tenancy Branch Rules of Procedure states that each respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing.

The landlord testified that the Application for Dispute Resolution and Notice of Hearing were sent by registered mail on July 15, 2016. Canada post tracking numbers were provided as evidence of service. The Canada post tracking shows the packages were successfully delivered to the respondents on July 18, 2016. I find that the tenants have been duly served in accordance with the Act.

The landlord appeared gave affirmed 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 money owed or compensation under the Act?

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 March 1, 2014. Rent in the amount of \$795.00 was payable on the first of each month. The tenants paid a security deposit of \$397.50. The tenancy ended on June 30, 2016.

The landlord claims as follows:

a.	Loss of revenue for July 2016	\$397.50
b.	Damages	\$ 68.25
c.	Filing fee	\$100.00
	Total claimed	\$565.75

The landlord testified that the tenant was served with a 1 Month Notice to End Tenancy for Cause, with an effective vacancy date of June 30, 2016. The landlord stated that because the tenant would not confirm they would move out of the rental unit by June 30, 2016. They did not attempt to find a new renter until the tenants had vacated as they did not want to be in a position of not being able to give the new renter the rental unit. The landlord stated that they found a new renter for July 15, 2016.

The landlord testified that the tenant caused damage to the rental unit. That the towel rack from the bathroom was missing, 2 lights were burnt out and there was blood on the floor. The landlord stated that these are not noted in the move-out condition inspection report because the lighting was poor in the unit at the time of the inspection.

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.

Section 21 of the Act States a condition inspection report completed in accordance with this section 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.

In this case the tenant was served with a notice to end tenancy with the effective date of June 30, 2016. The tenant vacated the premises in accordance with the notice to end tenancy. The fact the tenant did not confirm they would be vacating on the effective date is not a violation of the Act, I find it was a business decision of the landlord not to find a new renter. Therefore, I dismiss this portion of the landlord's claim

The landlord completed a move-out condition inspection report in accordance with the Act; the report is evidence of the condition of the rental unit at the end of the tenancy. In this case the landlord seeks compensation for a missing towel bar, 2 burnout lights and for cleaning blood off the floor. I find these items should have been identified in the move-out condition inspection as they were not hidden and easily identifiable. Further, I find the landlord has not provided a preponderance of evidence to the contrary, such as photographs. Therefore, I dismiss this portion of the landlord's claim.

As the landlord has not been successful with their application, I find the landlord is not entitled to recover the filing fee from the tenant.

Further, as I have dismissed the landlord's claim, I find the landlord is not entitled to keep any portion of the tenants' security deposit. Therefore, I order the landlord to return to the tenants their security deposit in the amount of **\$397.50**.

Should the landlord fail to comply with my order, I grant the tenants a monetary order in the amount of **\$397.50**. This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court. The **landlord is cautioned** that costs of such enforcement are recoverable from the landlord.

Conclusion

The landlord's application is dismissed. I the tenants are granted a monetary for the return of their security deposit.

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: January 12, 2017

Residential Tenancy Branch