



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MND, MNDC, 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, for damage to the rental unit, and for money owed or compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("Regulation") or tenancy agreement pursuant to section 67;
- authorization to retain all or a portion of the tenants' security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover the filing fee for this application from the tenants pursuant to section 72.

Tenant VS did not participate in the conference call hearing. Tenant SS (the "tenant") called into the conference call hearing 15 minutes after the hearing commenced. The tenant testified that he was authorized to speak on behalf of tenant VS. The landlord's agent (the "landlord") attended the hearing. The landlord confirmed he was an agent of the landlord's company named in this application, and had authority to speak on its behalf.

The tenant confirmed both tenants had received the landlord's application and evidence. The tenant also confirmed that neither tenant provided any documentary evidence for this hearing. As the tenant did not raise any issues regarding service of the application or the evidence, I find that the tenants were duly served with these documents in accordance with sections 88 and 89 of the *Act*. Both parties were given full opportunity to give affirmed testimony and present evidence.

Issue(s) to be Decided

Is the landlord entitled to a monetary order for unpaid rent, for damage to the rental unit, and for money owed or compensation for damage or loss under the *Act*, *Regulation* or tenancy agreement?

Is the landlord authorized to retain all or a portion of the tenants' security deposit in partial satisfaction of the monetary order requested?

Is the landlord authorization to recover the filing fee for this application from the tenants?

Background and Evidence

As per the submitted tenancy agreement and testimony of the parties, the tenancy began on December 1, 2015 on a fixed term until March 31, 2016 at which time the tenancy was renewed for another fixed term from April 1, 2016 to October 31, 2016. Rent in the amount of \$1,383.75 was payable on the first of each month. The tenants remitted a security deposit in the amount of \$675.00 at the start of the tenancy. The tenants vacated the rental unit on July 25, 2016.

On an undisclosed date, the tenants advised the landlord they had purchased a house and would be vacating the rental unit by the end of July 2016. The tenants vacated the rental unit on July 25, 2016 and the rental unit was re-rented effective August 1, 2016.

Written condition inspection reports were conducted on November 22, 2015 at move-in and on July 25, 2016, at move-out. The landlord submitted a copy of both reports, which are each signed by the landlord and tenant.

The landlord testified that he is seeking \$1,760.33 in damages, including the following;

Item	Amount
Carpet Cleaning	\$113.40
Interior Cleaning	\$105.00
Yard Maintenance	\$451.50
Driveway Repair	\$157.50
Water Bill	\$207.93
Liquidated Damages	\$625.00
Filing Fee	\$100.00
Total Monetary Claim	\$1,760.33

Carpet Cleaning. The landlord testified that as per the signed condition inspection move-out report, the carpets in the two bedrooms required professional cleaning. The landlord submitted an invoice that included carpet cleaning of two rooms and a set of stairs in the amount of \$113.40. In reply, the tenant testified that he had the carpets shampooed approximately one week prior to move-out. He did not submit a receipt; he testified it was lost in the move.

Interior Cleaning. The landlord contended that some areas of the rental unit remained dirty. Specifically, the windowsills, the toilet, the stove top and top of the fridge required

further cleaning. The landlord submitted a copy of the cleaning receipt in the amount of \$105.00. The tenant testified that the rental unit was cleaned prior to the end of tenancy.

Yard Maintenance. The landlord testified that the tenancy agreement required the tenants to maintain the side yard and part of the backyard. It is the landlord's position that although the tenants cut the lawn prior to move-out, extensive weeding was required. The landlord submitted a copy of an invoice that included weeding, trimming and mowing in the amount of \$451.50. The tenant testified that prior to move-out he mowed the lawn and weeded the yard.

Driveway Repair. The landlord explained that the gravel driveway required more gravel at the end of the tenancy due to the tenants use. The landlord submitted a photograph of the driveway. The tenant confirmed two vehicles regularly parked on the gravel driveway and disputes he should be held liable for the cost of gravel top up.

Water Bill. The landlord testified two water bills remain outstanding in the total amount of \$207.93. The tenant confirmed this amount remains outstanding and is agreeable to paying it.

Liquidated Damages. The landlord contends in signing the tenancy agreement, the tenants agreed their termination of the fixed term tenancy prior to expiry, would result in \$625.00 in liquidated damages for all costs associated with re-renting. The landlord testified that although a new tenancy was secured effective August 1, 2016, the landlord incurred costs in re-renting and has elected to invoke the liquidated damage clause.

The tenant testified that because he found the new tenants and they moved in August 1, 2016, the landlords did not suffer a loss and therefore the tenants should not be held liable for the liquidated damages.

Filing Fee. The landlord seeks to recover the \$100.00 filing fee paid for this application from the tenants.

Analysis

Under section 67 of the *Act*, when a party makes a claim for damage or loss, the burden of proof lies with the applicant to establish the claim. To prove a loss, the applicant must satisfy the test prescribed by Section 7 of the *Act*. The applicant must prove a loss actually exists and prove the loss happened solely because of the actions of the respondent in violation to the *Act*. The applicant must also verify the loss with receipts

and the applicant must show how they mitigated or what reasonable efforts they made to minimize the claimed loss.

Section 37 of the *Act*, establishes that when tenants vacate a rental unit, the tenants must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.

Residential Tenancy Policy Guideline #1 “Landlord & Tenant – Responsibility for Residential Premises,” defines reasonable wear and tear as the natural deterioration that occurs due to aging and other natural forces, where the tenants have used the premises in a reasonable fashion.

Carpet Cleaning. Based on the evidence presented, and balance of probabilities I find the carpets were not shampooed at the end of tenancy and required professional shampooing. In the absence of documentary evidence establishing the carpeted stairs required shampooing, I dismiss this portion of the submitted receipt and award the landlord compensation for the two bedrooms only. I find the landlord is entitled to \$78.00 plus tax in the amount of \$3.90 for a total of \$85.80.

Interior Cleaning. I find the tenants breached the *Act*, when they failed to clean the rental unit in its entirety. The signed move-out condition inspection report supports the landlord’s claim that the tenants left some portions of the rental unit dirty. Based on the submitted receipt I find the landlord is entitled to \$105.00 for cleaning.

Yard Maintenance. Based on the tenancy agreement I find the tenants were responsible for routine yard maintenance in the form of mowing and weeding. As per the signed move-out condition inspection report, the property required “a lot of weeding.” Therefore I am satisfied based on the balance of probabilities that some weeding was required at the end of the tenancy and find the landlord is entitled to a monetary award.

However, because the submitted invoice includes mowing, which the parties agreed was done prior to the move-out, and the invoice does not break down the cost of each task, I award the landlord a nominal award in the amount of \$100.00 for weeding.

Driveway Repair. I find the landlord has provided insufficient evidence to establish the gravel driveway required further gravel due to deliberate action of the tenants or neglect on their part. Instead, I find it probable, that with reasonable use, the driveway became depleted of gravel over time. In summary, I find it probable that the depleted gravel in the driveway was a result of reasonable wear and tear and dismiss this portion of the landlord’s claim.

Water Bill. Based on the undisputed testimony of the parties, I find the landlord is entitled to \$207.93 in outstanding water bills.

Liquidated Damages. Based on the testimony of the parties and submitted tenancy agreement, the parties had a fixed term tenancy that was scheduled to end on October 31, 2016. Although the tenants provided notice of the tenants' intent to end the tenancy by July 31, 2016, the tenants ended the tenancy earlier than the date specified in the fixed term tenancy agreement, which is not in compliance with section 45 of the *Act*.

Because the tenants ended the tenancy contrary to the *Act*, and the parties signed an agreement that included a liquidated damage clause, the tenants may be held liable for the amount stipulated in that clause, even if the landlord did not incur this amount of actual loss or damages.

However, in order to enforce a liquidated damage clause in a tenancy agreement or addendum, it must first be determined whether the clause is valid. Specifically it must be determined whether the amount agreed to is a genuine pre-estimate of the loss at the time the contract was entered into or a whether the amount constitutes a penalty.

Pursuant to Residential Tenancy Policy Guideline #4 Liquidated Damages, I find the liquidated damage clause in the tenancy agreement does not constitute a penalty as it is not extravagant in comparison to the greatest loss that could follow a breach, it does not indicate failure to pay results in a greater amount having to be paid and it does not require a single lump sum to be paid on occurrence of several events, some trivial some serious.

Instead, I find the liquidated damage clause is a genuine pre-estimate of the loss at the time the contract was entered into, thereby making the clause valid. Therefore, I find the landlord is entitled to recover liquidated damages in the amount of \$625.00 from the tenants.

Filing Fee. As the landlord was partially successful in this application, I find that the landlord is entitled to recover \$50.00 of the \$100.00 filing fee for a total award of \$1,173.73.

In accordance with the offsetting provisions of section 72 of the *Act*, I allow the landlord to retain \$1,173.73 of the security deposit in partial satisfaction of the monetary award and I grant an order for the balance due \$498.73.

Conclusion

Item	Amount
Carpet Cleaning	\$85.80
Interior Cleaning	\$105.00
Yard Maintenance	\$100.00
Water Bill	\$207.93
Liquidated Damages	\$625.00
Filing Fee	\$50.00
Less Security Deposit	(\$675.00)
Total Monetary Order	\$498.73

The landlord is entitled to \$1,173.73. I order the landlord to retain the \$675.00 security deposit in partial satisfaction of the monetary award and I grant an order for the balance due \$498.73.

The remainder of the landlord's application for a monetary order is dismissed without leave to reapply.

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: February 08, 2017

Residential Tenancy Branch