



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNR, MNSD, MNDC, FF

Introduction

This hearing dealt with the landlords' Application for Dispute Resolution seeking a monetary order.

The hearing was conducted via teleconference and was attended by both landlords.

The landlords submitted documentary evidence to confirm the tenant was served with the notice of hearing documents and this Application for Dispute Resolution, pursuant to Section 59(3) of the *Residential Tenancy Act (Act)* by registered mail on September 15, 2016 in accordance with Section 89. Section 90 of the *Act* deems documents served in such a manner to be received on the 5th day after they have been mailed.

Based on the documentary evidence and testimony of the landlord, I find that the tenant has been sufficiently served with the documents pursuant to the *Act*.

I note that while the landlords have included in their Application for Dispute Resolution that they are seeking to retain the security deposit the disposition of the security deposit was ordered in a previous decision issued on September 13, 2016 (file numbers on the coversheet of this decision). As a result, I amend the landlords' Application to exclude the matter of the security deposit.

Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to a monetary order for unpaid utilities and/or lost revenue; for compensation for damage to and cleaning of the rental unit and other related expenses and to recover the filing fee from the tenant for the cost of the Application for Dispute Resolution, pursuant to Sections 37, 45, 67, and 72 of the *Act*.

Background and Evidence

The landlord submitted into evidence a copy of a tenancy agreement between the parties for a 1 year fixed term tenancy beginning on April 1, 2015 for a monthly rent of \$2,600.00 due on the 1st of each month with a security deposit of \$1,300.00 and a pet damage deposit of \$700.00 paid. As noted above, both deposits were disposed of in a previous decision. The landlord testified the tenant vacated the rental unit by December 30, 2015, prior to the March 31, 2016 end of the fixed term.

The landlord submitted that as a result of the tenant vacating prior to the end of the fixed term, the landlord did not receive any rent for the month of January 2016 and received only \$2,500.00 per month for the months of February and March 2016. The landlord seeks \$2,600.00 for lost

revenue for the month of January 2016 and \$200.00 in total for the months of February and March 2016.

The landlord also seeks the following compensation for the tenant's failure to comply with the full term of the tenancy agreement:

- \$560.00 for allowing the tenant to take possession of the rental unit 7 days prior to the start date of the tenancy agreement at \$80.00 per day, as was their verbal agreement if the tenant vacated the unit earlier than the end of the fixed term;
- \$50.00 for dinner purchased for the tenant at the start of the tenancy; and
- \$120.00 for re-scheduling the landlord's flight to return to the local community to deal with the tenant leaving earlier than the fixed term.

The landlord seeks compensation in the amount of \$315.00 for water and sewage charges during the tenancy and \$450.00 because the tenant failed to pay gas utilities. The tenancy agreement shows that water is included in the tenancy. The landlord confirmed that they did not have to pay the gas utility company any monies on behalf of the tenants during the tenancy.

The landlord seeks compensation in the amount of \$500.00 for carpet cleaning. The landlord also seeks compensation for the costs to repair damage to the residential property or replace fixtures damaged during the tenancy. In support of these claims the landlord has submitted photographic evidence showing of the various items:

Description	Amount
Mini Fridge	\$150.00
Vacuum	\$320.00
Wood Wardrobe	\$250.00
Mini Storage unit	\$100.00
Shower Curtain replacement	\$30.00
5 Light Bulbs replaced	\$50.00
Repairs to 1000 nail holes in garage	\$1,000.00
Window Shade replacement	\$100.00
Desk damage	\$50.00
Shower plug replacement	\$50.00
Total	\$2,100.00

Analysis

To be successful in a claim for compensation for damage or loss the applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
3. The value of the damage or loss; **and**
4. Steps taken, if any, to mitigate the damage or loss.

Section 45(2) stipulates that a tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy on a date is not earlier than one month after the date the landlord receives the notice; is not earlier than the date specified in the tenancy agreement as the end of the tenancy; and is the day before the day in the month that rent is payable under the tenancy agreement.

Section 45(3) states that if the landlord has failed to comply with a material term of the tenancy agreement and has not corrected the situation within a reasonable period after the tenant gives written notice of the failure, the tenant may end the tenancy effective on a date that is after the date the landlord receives the notice.

A material term of a tenancy agreement is a term that is agreed by both parties is so important that the most trivial breach of that term gives the other party the right to end the tenancy, such as the payment of rent.

As there is no evidence before me that the tenant had advised the landlord at any time of a breach of a material term of the tenancy agreement or of their intention to end the tenancy if the landlord did not correct it, I find the earliest the tenant could have ended the tenancy was March 31, 2016.

As a result, I find the tenant is obligated to pay rent until the end of the fixed term subject only to the landlord's obligation to mitigate their losses.

Based on the landlord's undisputed submissions I find the tenant vacated the rental unit earlier than the end of the fixed term and that the tenant failed to pay rent for the month of January 2016. Further, I accept the landlord's undisputed submissions that they were only able to re-rent the unit to a new tenant at a reduced rental amount for the months of February and March 2016.

I am satisfied by the landlord's submissions that the landlord took reasonable steps to mitigate their losses of revenue which has minimized the amount owed to the landlord from the tenant to \$2,800.00 for lost revenue.

I also accept that the landlord and the tenant had a verbal agreement that should the tenant fail to complete the fixed term that the landlord would charge the tenant a per diem rate for early possession of the rental unit. As the tenant has failed to complete the fixed term, the tenant is obligated to pay the landlord \$560.00 for the period of 7 days prior to April 1, 2015.

I dismiss the landlord's claim for \$50.00 for a dinner the landlord purchased for the tenant at the start of the tenancy. There is no evidence before me that the dinner was contingent on the fixed term.

I also dismiss the portion of the landlord's claim, in the amount of \$120.00 for the cost to re-scheduling his flight to return to the community where the rental unit is, as a cost of doing business.

As water is included as a service provided in the tenancy agreement, I dismiss the landlord's claim for water and sewage charges in the amount of \$315.00. In addition, as the landlord has not identified any costs to them associated with the non-payment of the gas utility, I dismiss this portion of their claim for \$450.00.

Section 37 of the *Act* states that when a tenant vacates a rental unit at the end of a tenancy the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear and give the landlord all the keys or other means of access that are in the possession or control of the tenant and that allow access to and within the residential property.

I accept the landlords' undisputed submissions that the carpet required cleaning and that the tenant failed to do so. I find the cost of \$500.00 to be a reasonable amount for carpet cleaning.

In relation to the remainder of the landlords' claim for compensation for damage to specific items and the property itself, I find the landlord has established the claim, based in part on their undisputed submissions, with one exception. I find the landlord has failed to establish that there were a sufficient number of holes in the garage that required a repair in the amount of \$1,000.00.

I am satisfied that there were some holes that were made with the landlords' knowledge or consent and award the landlord a nominal amount of \$100.00.

Conclusion

I find the landlords are entitled to monetary compensation pursuant to Section 67 and I grant a monetary order in the amount of **\$5,160.00** comprised of \$3,360.00 lost revenue; \$500.00 carpet cleaning; \$1,200.00 for miscellaneous repairs and the \$100.00 fee paid by the landlords for this application.

This order must be served on the tenant. If the tenant fails to comply with this order the landlord may file the order in the Provincial Court (Small Claims) and be enforced as an order of that Court.

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: March 14, 2017

Residential Tenancy Branch