



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Code MNR, MND, MNSD, 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 unpaid rent and utilities, for damages to the unit and for an order to retain the security deposit in partial satisfaction of the claim.

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

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

The landlord testified the Application for Dispute Resolution and Notice of Hearing were sent by registered mail on October 3, 2016, to the forwarding address of the tenant.

Section 90 of the Act determines that a document served in this manner is deemed to have been served five days later. I find that the tenant has been duly served in accordance with the Act.

The landlord appeared gave 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 unpaid rent?

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 August 1, 2015. Rent in the amount of \$1,400.00 was payable on the first of each month. The tenant paid a security deposit of \$700.00. The tenancy ended on September 30, 2016.

The landlord claims as follows:

a.	Unpaid rent for August and September 2016	\$2,800.00
b.	Unpaid utilities	\$ 105.00
c.	Garbage removal, damage hardy plank	\$ 495.00
d.	Filing fee	\$ 100.00
	Total claimed	\$3,400.00

The landlord testified that the tenant failed to pay rent for August and September 2016, and was served with a notice to end tenancy. The landlord stated that the tenant failed to pay their utilities and the amount was transferred to the home owner. The landlord seeks to recover the amount of \$2,905.00.

The landlord testified that the tenant left a lot of garbage, which they had to pick up and take to the garbage dump and each dump fee was \$50.00 for each trip. The landlord stated the tenant also caused damage to the hardy plank siding as there BQ was to close. The landlord seeks compensation in the amount of \$495.00. Filed in evidence are photographs of garbage left behind and damaged hardy plank.

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.

Rules about payment and non-payment of rent

26 (1) *A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.*

...

I accept the undisputed evidence of the landlord that the tenant failed to pay rent for August 2016 and September 2016. I accept the undisputed evidence of the landlord that the tenant failed to pay the utilities owed. I find the tenant breached the Act and this caused losses to the landlord. Therefore, I find the landlord is entitled to recover unpaid rent and utilities in the amount of **\$2,905.00**.

Leaving the rental unit at the end of a tenancy

37 (2) When a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.

Normal wear and tear does not constitute damage. Normal wear and tear refers to the natural deterioration of an item due to reasonable use and the aging process. A tenant is responsible for damage they may cause by their actions or neglect including actions of their guests or pets.

I accept the undisputed evidence of the landlord that the tenant did not remove their garbage at the end of the tenancy and caused damage to the hardy plank siding. This is supported by photographs. I find the tenant breached the Act, when they left the premises dirty and damaged. Therefore, I find the landlord is entitled to recover the amount of **\$495.00**.

I find that the landlord has established a total monetary claim of **\$3,400.00** comprised of the above described amount and the \$100.00 fee paid for this application.

I order that the landlord retain the security deposit of **\$700.00** in partial satisfaction of the claim and I grant the landlord an order under section 67 of the Act for the balance due of **\$2,700.00**.

This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court. The **tenant is cautioned** that costs of such enforcement are recoverable from the tenant.

Conclusion

The landlord is granted a monetary order and may keep the security deposit in partial satisfaction of the claim and the landlord is granted a formal order for the balance due.

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 30, 2017

Residential Tenancy Branch