



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 was convened as a result of the landlord's application for dispute resolution under the *Residential Tenancy Act* (the "*Act*") for a monetary order for unpaid rent or utilities, for damage to the unit, site or property, for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, to retain all or part of the tenants' security deposit and pet damage deposit, and to recover the cost of the filing fee.

The landlord attended the teleconference hearing and gave affirmed testimony. During the hearing the landlord was given the opportunity to provide her evidence orally. A summary of the evidence is provided below and includes only that which is relevant to the hearing.

As the tenants did not attend the hearing, service of the Notice of a Dispute Resolution Hearing (the "Notice of Hearing"), Application for Dispute Resolution (the "Application") and documentary evidence were considered. The landlord testified that the Notice of Hearing, Application and documentary evidence were served on the tenants each with their own registered mail package on November 10, 2016. Two registered mail tracking numbers were submitted in evidence which have been included on the cover page of this decision for ease of reference as "1" and "2". According to the online registered mail tracking website, tenant M.M. signed for and accepted her registered mail package on November 14, 2016 and tenant E.N signed for and accepted his registered mail package on November 17, 2016. Based on the above, I find tenant M.M. was served as of November 14, 2016, and tenant E.N. was served on November 17, 2016, which are the dates the tenants signed for and accepted their respective registered mail packages. As a result, the hearing continued without the tenants.

The landlord also testified that when she amended her Application on March 14, 2017 she once again served the tenants both with their own registered mail packages, the

tracking numbers of which have been included on the cover page of this decision for ease of reference as “3” and “4”. According to the online registered mail tracking website, both packages were returned to the landlord as “unclaimed”. Pursuant to section 90 of the *Act* which states that documents mailed by registered mail are deemed served five days after they are mailed, I find that both amendment packages were deemed served on the tenants as of March 19, 2017.

Issues to be Decided

- Is the landlord entitled to a monetary order under the *Act*, and if so, in what amount?
- What should happen with the tenants’ security deposit and pet damage deposit under the *Act*?

Background and Evidence

The landlord submitted a copy of the written tenancy agreement in evidence. A fixed term tenancy began on October 1, 2015 and ended on October 16, 2016 when the tenants vacated the rental unit. The landlord testified that monthly rent is \$2,850.00 per month and was due on the first day of each month. The landlord stated that the tenants paid a security deposit of \$1,425.00 and a pet damage deposit of \$250.00 at the start of the tenancy which the landlord continues to hold.

The landlord’s monetary claim for \$8,605.68 is comprised as follows:

ITEM DESCRIPTION	AMOUNT CLAIMED
1. Late fee for September 2016	\$45.00
2. Unpaid rent for October 2016 (landlord only claiming ½ month of rent as tenants vacated on October 16, 2016)	\$1,425.00
3. Unpaid utilities	\$568.52
4. Garage door replacement	\$1,603.20
5. Washer, shower head, plugs	\$535.00
6. Cleaning	\$1,134.00
7. Carpet cleaning	\$969.10
8. Landscaping and power washing	\$2,000.00
9. Keys replacement (locks)	\$134. 39
10. Mail, postage and printing	\$191.47
TOTAL	\$8,605.68

The landlord submitted a 191 page binder of documentary evidence not including the tabs A through Z.

Regarding item 1, the landlord referred to section 14 of the tenancy agreement addendum which indicates that a fee of \$45.00 for any late payments of rent will be charged. The landlord affirmed that the rent paid by the tenants for September 2016 was very late.

Regarding item 2, the landlord testified that she was only seeking loss of half of a month's rent for October 2016 as the tenants vacated the rental unit on October 16, 2016. As a result, the landlord is seeking \$1,425.00 for this portion of her claim.

Regarding item 3, the landlord referred to tab "I" and presented receipts for unpaid utilities. The landlord also presented the tenancy agreement which supports that utilities were not included in the monthly rent. The receipts presented total \$568.52 as claimed for this portion of the landlord's monetary claim.

Regarding item 4, the landlord has claimed \$1,603.20 to replace the damaged garage door. The landlord testified and referred to a photo to support that during the tenancy the tenants damaged the garage door with their car and that it could not be repaired as it would not open and close safely according to a garage repair technician and needed to be replaced as a result. The landlord referred to a receipt submitted in evidence in the amount of \$1,603.20. The landlord also referred to a photo taken before the tenancy began which showed the garage door before it was damaged during the tenancy. The landlord also referred to the condition inspection report which indicated the garage door damage which was signed by tenant E.N. agreeing to the damage. The landlord testified that she chose the cheapest quote to repair the garage door.

Regarding item 5, the landlord has claimed \$535.00 for a washer repair, shower head repair and plug repair. The landlord testified that after attempts to clean the rental unit that did not successfully take the smell of pets out of the rental unit, the cleaners tried to use the washing machine on the third attempt to clean and could not close the washing machine door due to a broken hinge. As a result, the washing machine required repair as it was damaged by the tenants during the tenancy. The landlord also testified that the shower head and plugs were damaged and that the total repair came to \$535.00 for this portion of the landlord's monetary claim which was supported by receipts.

Regarding item 6, the landlord has claimed \$1,134.00 in total for three attempts to fully clean the rental unit which was left very dirty and smelled of bad pet odour. The landlord

referred to photo evidence, condition inspection report and the submitted receipts in support of this portion of her claim which total \$1,134.00.

Regarding item 7, the landlord has claimed \$969.00 for carpet cleaning as that cleaning costs were cheaper than removing the carpets and installing new carpets. The landlord referred to photo evidence of extremely dirty carpets and stated that the carpets were brand new at the start of the tenancy. The condition inspection report indicates that tenant E.N. agreed with the replacement of the carpets however to reduce cost the landlord had the carpets cleaned twice for a total amount of \$969.00 which was supported by the receipts submitted in evidence.

Regarding item 8, the landlord has claimed \$2,000.00 for landscaping repairs and power washing costs. The landlord referred to photo evidence which supports that the tenants changed the backyard by allowing the grass to be killed and by failing to maintain the yard in accordance with section 44 of the tenancy agreement addendum. The landlord presented receipts which total \$2,000.00 in support of this portion of the landlord's monetary claim.

Regarding item 9, the landlord has claimed \$134.39 for key replacement as the tenants failed to return the rental unit keys at the end of the tenancy. The landlord presented a receipt that totals \$134.39 as claimed.

Regarding item 10, this portion of the landlord's claim was dismissed during the hearing as the landlord is not entitled to the recovery of the mail, postage and printing costs associated with an Application under the *Act*. The landlord was advised that the filing fee would be dealt with in my decision however.

Analysis

Based on the undisputed documentary evidence and undisputed testimony of the landlord, and on the balance of probabilities, I find the following.

As the tenants were served with the Notice of Hearing, Application and documentary evidence and did not attend the hearing, I consider this matter to be unopposed by the tenants.

Regarding item 1, even though this matter was unopposed, I find the landlord exceeded the \$25.00 limit specified in section 7(1)(d) of the Residential Tenancy Regulation (the "Regulation") for late payments of rent. Therefore, I dismiss \$20.00 of the \$45.00

amount claimed for item 1 and grant **\$25.00** for item 1 as that is the maximum amount permitted by the Regulation for each late payment of rent.

Furthermore, as described above, item 10 was dismissed as there is no remedy under the *Act* for the costs as claimed.

For items 2 to 9 inclusive, I find the landlord has met the burden of proof and is entitled to the full amounts as claimed. Given that the landlord's claim has merit, I grant the landlord the recovery of the cost of the filing fee pursuant to section 72 of the *Act* in the amount of **\$100.00**.

I find the landlord has established as total monetary claim of **\$8,494.21** as follows:

ITEM DESCRIPTION	AMOUNT AWARDED
1. Late fee for September 2016	\$25.00
2. Unpaid rent for October 2016 (landlord only claiming ½ month of rent as tenants vacated on October 16, 2016)	\$1,425.00
3. Unpaid utilities	\$568.52
4. Garage door replacement	\$1,603.20
5. Washer, shower head, plugs	\$535.00
6. Cleaning	\$1,134.00
7. Carpet cleaning	\$969.10
8. Landscaping and power washing	\$2,000.00
9. Keys replacement (locks)	\$134.39
10. Mail, postage and printing	dismissed
11. Recovery of cost of filing fee	\$100.00
TOTAL	\$8,494.21

In reaching this finding I have considered the photo evidence, condition inspection report, receipts and testimony provided. In addition, I find that the tenants breached sections 37 and 26 of the *Act*. Section 37 of the *Act* requires that tenants leave the rental unit in a reasonably clean condition less wear and tear and I find that the photo evidence supports that the tenants breached section 37 by damaging the rental unit and leaving it a very dirty condition. Section 26 of the *Act* requires that tenants pay rent on the date in which it is due in accordance with the tenancy agreement. Based on the undisputed evidence before me, I find the tenants breached section 26 of the *Act*. The landlord continues to hold a security deposit of \$1,425.00 and a pet damage deposit of \$250.00 for a total in combined deposits in the amount of \$1,675.00 which

have accrued \$0.00 in interest. I authorize the landlord to retain the tenants' full \$1,425.00 security deposit and full \$250.00 pet damage deposit pursuant to section 72 of the *Act* in partial satisfaction of the landlord's monetary claim. Based on the above, I grant the landlord a monetary order pursuant to section 67 of the *Act*, for the amount owing by the tenants to the landlord in the amount of **\$6,819.21**.

Conclusion

The landlord's application is successful.

The landlord has established a total monetary claim of \$8,494.21 and has been authorized to retain the tenants' full \$1,425.00 security deposit and full \$250.00 pet damage deposit pursuant to section 72 of the *Act* in partial satisfaction of the landlord's monetary claim. In addition, the landlord is granted a monetary order pursuant to section 67 of the *Act*, for the amount owing by the tenants to the landlord in the amount of **\$6,819.21**. The landlord must serve the tenants with the monetary order and may enforce the monetary order in the Provincial Court (Small Claims Division).

This decision is final and binding on the parties, unless otherwise provided under the *Act*, 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: April 13, 2017

Residential Tenancy Branch