



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPB, OPN, MND, MNR, MNSD

Introduction

This hearing dealt with the landlords' application pursuant to the *Residential Tenancy Act* (the Act) for:

- an order of possession for breach of an agreement and/or as a result of a mutual agreement pursuant to section 55;
- a monetary order for unpaid rent and for damage to the unit 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;

Both parties attended the hearing via conference call and provided affirmed testimony. The tenants confirmed that the landlord's notice of hearing package and the submitted documentary evidence was served via Canada Post Registered Mail on October 27, 2016. The tenants stated that their documentary evidence package was served to the landlords via regular post sometime between March and April 2017. The landlords disputed that no documentary evidence was received from the tenants. The tenants clarified that they have no proof of service regarding the submitted documentary evidence. I accept the undisputed affirmed evidence of both parties and find that both parties have been properly served with the notice of hearing package and the landlord's submitted documentary evidence as per sections 88 and 89 of the Act. I find that as the landlord has disputed receiving any documentary evidence from the tenants and the tenants have been unable to provide sufficient evidence of service that the tenants' evidence package shall be excluded from consideration in this decision.

At the outset both parties confirmed that the tenants had vacated the rental premises on September 16, 2016 and that an order of possession was not required. As such, the landlords' request for an order of possession (OPB and OPN) required no further action. During the hearing the landlords removed item # 2 and #3 from the landlords' monetary worksheet. As such, no further action is required for these items.

Issue(s) to be Decided

Are the landlords entitled to a monetary order for unpaid rent and for damage?

Are the landlords entitled to retain all or part of the security and pet damage deposits?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

This tenancy began on May 15, 2016 on a fixed term tenancy ending on May 15, 2017 as per the submitted copy of the signed tenancy agreement. The monthly rent was \$3,000.00 payable on the 15th day of each month. A security deposit of \$1,500.00 and a pet damage deposit of \$1,500.00 were paid on April 29, 2016. Both parties agreed that a condition inspection report for the move-in was not completed. Both parties agreed that a condition inspection report was completed at the move-out on September 16, 2016.

The landlords claimed that the tenants vacated the rental unit leaving it dirty and damaged.

The landlords seek an amended and lowered monetary claim of \$21,669.55 from \$22,509.15 which consists of:

\$296.80	Hot Tub Cleaning
\$372.75	Carpet/Bedroom Cleaning
\$21,000.00	Loss of Rental Income (7 months @ \$3,000.00)

The landlords provided affirmed testimony that the tenants left the hot tub dirty requiring a cleaning. The tenants argued that they had never used the hot tub, but have conceded that the hot tub was left in this condition that required cleaning. The tenants agreed to this portion of the landlords' claim.

The landlords provided affirmed testimony that the tenants left the rental premises dirty requiring cleaning. The tenants dispute this claim stating that the rental premises was left clean at the end of the tenancy. The landlords rely upon a submitted copy of an estimate for \$372.75 dated October 15, 2016. It details a steam clean of the lower level carpet and stairwell as well as cleaning bedroom #3 for 2 hours @ \$30.00 per hour. In support of this claim the landlords provided 2 photographs of a dirty ceiling fan and hair in the sink of bedroom #3. The landlords claim that this estimate was paid at the quoted price, but failed to submit a copy of the paid invoice.

The landlords also seek compensation for the loss of rental income of \$21,000.00 for 7 months of rent at \$3,000.00 per month. The landlords stated that they tried to re-rent the unit but as of the date of this hearing have not been successful. The tenants dispute this claim stating that the tenants tried to assist in advertising the premises for rent and had referred 12 person(s) as potential tenant(s).

Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

In this case, I find that as the tenants have conceded the first item of claim by the landlords that the landlords have been successful for recovery of \$296.80 for hot tub cleaning.

On the second item of claim of \$372.75, I find that the landlords have failed. This claim was disputed by the tenants who stated that the rental premises was left clean. The landlord relies upon an estimate for the cleaning as well as 2 photographs of a dirty ceiling fan and hair in a sink. I find that this fails to provide sufficient evidence that a steam cleaning of the entire lower level carpet, stairwell and 2 hours of cleaning of bedroom #3. As such, this portion of the landlords' claim is dismissed.

The landlords have claimed that after the tenants vacated the rental unit the landlords were unable to re-rent the premises. This was disputed by the tenants. The tenants provided undisputed affirmed testimony that they had assisted the landlords in advertising the premises and had referred 12 parties as potential renters. The landlords were unable to provide sufficient evidence that reasonable efforts were made to re-rent the premises.

Residential Tenancy Branch Policy Guideline #5, Duty to Minimize Loss states in part,

Where the landlord or tenant breaches a term of the tenancy agreement or the Residential Tenancy Act or the Manufactured Home Park Tenancy Act (the Legislation), the party claiming damages has a legal obligation to do whatever is reasonable to minimize the damage or loss¹. This duty is commonly known in the law as the duty to mitigate. This means that the victim of the breach must take reasonable steps to keep the loss as low as reasonably possible. The applicant will not be entitled to recover compensation for loss that could reasonably have been avoided.

The duty to minimize the loss generally begins when the person entitled to claim damages becomes aware that damages are occurring...

Failure to take the appropriate steps to minimize the loss will affect a subsequent monetary claim arising from the landlord's breach, where the tenant can substantiate such a claim...

The Legislation requires the party seeking damages to show that reasonable efforts were made to reduce or prevent the loss claimed. The arbitrator may require evidence such as receipts and estimates for repairs or advertising receipts to prove mitigation.

As such, I find that the landlord has failed to provide sufficient evidence to establish the landlords' monetary claim of \$21,000.00 for the loss of rental income for 7 months.

The landlord has established a total monetary claim of \$296.80.

I also find that as the landlords have been partially successful in their application that the landlords are entitled to recovery of \$50.00 for the filing fee.

In offsetting this claim, I authorize the landlords to retain \$346.80 from the combined \$3,000.00 security and pet damage deposits. The landlords are to return the remaining balance of \$2,653.20 of the combined security and pet damage deposits.

Conclusion

The tenants are granted a monetary order for \$2,653.20.

This order must be served upon the landlords. Should the landlords fail to comply with the order, the order may be filed in the Small Claims Division of the Provincial Court and 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: May 2, 2017

Residential Tenancy Branch