



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNR, MNDC, MNSD, FF

Introduction

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

The hearing was conducted via teleconference and was attended by the landlord.

The landlord testified 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 November 10, 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 testimony of the landlord, I find that the tenant has been sufficiently served with the documents pursuant to the *Act*.

Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to a monetary order for unpaid rent; for lost revenue; for compensation for cleaning of and damage to the rental unit; for all or part of the security deposit and to recover the filing fee from the tenant for the cost of the Application for Dispute Resolution, pursuant to Sections 37, 38, 67, and 72 of the *Act*.

Background and Evidence

The landlord submitted into evidence a copy of a tenancy agreement signed by the parties on November 13, 2013 for a 1 year fixed term tenancy beginning on December 1, 2013 for the monthly rent of \$600.00 due on the 1st of each month with a security deposit of \$300.00 paid.

The landlord testified that after the tenant failed to pay rent for the month of November 2014 she issued the tenant a 10 Day Notice to End Tenancy for Unpaid Rent on November 2, 2014. The landlord submitted that after there was no response from the tenant by November 8, 2014 her property manager attended the rental unit and found it vacant. I note the landlord submitted her Application for Dispute Resolution to the Residential Tenancy Branch on November 2, 2016.

The landlord seeks rent for the month of November 2014 in the amount of \$600.00. In addition, due to the condition of the rental unit and the work required to make it rentable again the landlord could not rent the unit out until January 2015 and so seeks compensation for lost revenue, in the amount of \$600.00 for the month of December 2014.

The landlord testified the rental unit had a number of holes punched into the drywall which required repairs and painting; significantly damaged and stained carpet; and that the tenant had left behind a substantial amount of garbage and furniture. The landlord seeks the following compensation:

Description	Amount
Garbage and furniture removal	\$201.60
Cleaning	\$170.00
Drywall repair	\$80.00
Painting (including paint and materials)	\$414.11
Carpet Replacement	\$1,546.07
Total	\$2,411.75

In support of this claim the landlord has submitted several photographs; receipts and a substantial volume of email correspondence. The landlord also testified that the carpet, at the time the tenancy ended had been 2 years old and the unit had been painted about a year prior to the start of the tenancy.

Analysis

Section 60(1) of the Act states that an application for dispute resolution must be made, within 2 years of the date that the tenancy to which the matter relates ends. Section 44(1) of the Act states a tenancy ends only if one or more of the following applies:

- a) The tenant or landlord gives a notice to end the tenancy in accordance with one of the following:
 - i. Section 45 (tenant's notice);
 - ii. Section 46 (landlord's notice: non-payment of rent);
 - iii. Section 47 (landlord's notice: cause);
 - iv. Section 48 (landlord's notice: end of employment);
 - v. Section 49 (landlord's notice: landlord's use of property);
 - vi. Section 49.1 (landlord's notice: tenant ceases to qualify);
 - vii. Section 50 (tenant may end tenancy early);
- b) The tenancy agreement is a fixed term tenancy agreement that provides that the tenant will vacate the rental unit on the date specified as the end of the tenancy;
- c) The landlord and tenant agree in writing to end the tenancy;
- d) The tenant vacates or abandons the rental unit;
- e) The tenancy agreement is frustrated; or

f) The director orders the tenancy is ended.

In the case before me, I accept the landlord issued a 10 Day Notice to End Tenancy on November 2, 2014 and as a result the tenancy would have ended, allowing 3 days for service, on November 15, 2014 or when the tenant moved out of the rental unit. As the landlord was not made aware that the tenant had moved out of the unit on or before November 8, 2014 I find the earliest the tenancy ended was November 8, 2014.

As noted above, the landlord submitted her Application for Dispute Resolution seeking compensation on November 2, 2016. As a result, I find the landlord has filed her claim within the 2 year limitation outlined in Section 60 of the *Act*.

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.

Based on the landlord's undisputed testimony regarding the non-payment of rent for the month of November 2014, I find the landlord is entitled to compensation in the amount of \$600.00.

Furthermore, in relation to the landlord's claim for compensation for lost revenue, I find that since the tenant had never informed the landlord of when she actually moved out of the rental unit and the evidence of the condition of the rental unit it is reasonable that the landlord could not rent the unit effective December 1, 2014. Therefore, I find the landlord has established that she has lost revenue in the amount of \$600.00 for December 2014.

In addition, I am satisfied, based on the preponderance of undisputed documentary and testimonial evidence I find the landlord has established the financial losses for cleaning of and repairs to the rental unit as claimed. I note that normally the cost of painting might be discounted depending on how old the paint was. However, in the case before, I find the landlord may never have had to paint the unit had the significant, and what appears to be, deliberate damage to the rental unit had occurred. As such, I find the landlord is entitled to the full amount of the costs for drywall repairs; painting; and carpet replacement.

Conclusion

I find the landlord is entitled to monetary compensation pursuant to Section 67 in the amount of **\$3711.78** comprised of \$600.00 rent owed; \$600.00 lost revenue; \$170.00 cleaning; \$2241.78 and the \$100.00 fee paid by the landlord for this application.

I order the landlord may deduct the security deposit and interest held in the amount of \$300.00 in partial satisfaction of this claim. I grant a monetary order in the amount of **\$3,411.78**. 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: May 09, 2017

Residential Tenancy Branch