



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MNSD, FF, MNDC

Introduction

This hearing dealt with applications from both the landlord and the tenants under the *Residential Tenancy Act* (the *Act*). The landlord applied for:

- a monetary order for unpaid rent pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38;
- authorization to recover the filing fee for this application from the tenants pursuant to section 72.

The tenants applied for:

- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- authorization to obtain a return of all or a portion of her security deposit pursuant to section 38;
- authorization to recover their filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing via conference call and provided affirmed testimony. The tenants confirmed that they received the landlord's notice of hearing package via Canada Post Registered Mail. The landlord confirmed receipt of the tenants' notice of hearing package and the submitted documentary evidence via Canada Post Registered Mail. The tenants also confirmed receipt of the landlord's late submitted documentary evidence via Priority Post. Neither party raised any issues with service. As both parties have attended and have confirmed receipt of the notice of hearing package and the submitted documentary evidence of the other party, I am satisfied that both parties have been sufficiently served as per sections 88 and 89 of the *Act*.

Issue(s) to be Decided

Is the landlord entitled to a monetary order for unpaid rent and recovery of the filing fee?

Is the landlord entitled to retain all or part of the security deposit?

Are the tenants entitled to a monetary order for money owed or compensation, return of the security deposit and recovery of the filing fee?

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 both the tenant's claim and the landlord's cross claim and my findings around each are set out below.

Both parties confirmed that this tenancy was based upon a verbal agreement in which the tenancy ended on December 31, 2016. The monthly rent was \$1,500.00 and that a security deposit of \$750.00 was paid.

The landlord claims that the tenancy began on September 2, 2016. The tenants claim that the tenancy began on October 1, 2016.

The landlord provided undisputed affirmed testimony that the tenants failed to pay rent for December 2016 and failed to provide proper notice to end the tenancy.

The landlord seeks a monetary claim of \$2,850.00 which consists of:

\$1,350.00	Unpaid Rent, December 2016
\$1,500.00	Loss of Rental Income, January 2017

The landlord clarified in the application that the tenants were credited \$50.00 for each night that the tenants were inconvenienced for not having any hot water when the new water boiler was installed over a 2 day period and for the 1 night when the water main froze for a total of \$150.00. The landlord claims that the tenants had vacated the rental premises as a result of complying with a 10 Day Notice to End Tenancy dated December 24, 2016.

The tenants confirmed in their direct testimony that they did not pay rent for December 2016 and that they had vacated the rental premises on December 31, 2016. The tenants stated that the rental premises were deficient as the appliances were breaking down and that the landlord failed to repair them. The landlord claimed that the tenants never returned calls from the landlord or that any issues were reported regarding the condition of the rental premises.

The landlord claims that the tenants only provided verbal notice to vacate the rental unit on December 31, 2016. The landlord also provided direct testimony that at no time was the rental unit advertised to re-rent for January 2017.

The tenants seek a monetary claim of \$4,751.41 which consists of:

\$2,500.00	Cleaning
\$552.36	Moving Expenses
\$200.00	Loss of Food, due to Broken Fridge
\$750.00	Return of Security Deposit
\$619.39	Telus
\$42.62	Other Expenses

The tenants provided testimony that the rental premises was provided to the tenants at the beginning of the tenancy dirty, requiring extensive cleaning of 8 hours. The tenants suffered an added expense of moving costs to move-in and then move-out. The tenants stated that because of the deficient refrigerator that they suffered food damage/spoilage. The tenants also seek recovery of installation costs for telephone services and other expenses.

The landlord disputes the tenants' claims stating that the rental premises were provided clean to the tenants at the beginning of the tenancy. The landlord confirmed that the freezer portion of the refrigerator needed repair, but has never received a complaint from the tenants regarding food spoilage. The landlord stated that the tenants have never provided any proof of food damages during the tenancy or anything for this hearing. The landlord disputes the tenants' claims for installation of telephone services or other expenses as no details of these other expenses have been provided and that the tenant vacated the rental premises at their choice without proper notice to the landlord.

The tenants stated that a letter was sent registered mail to the landlord on January 5, 2017 requesting the return of the \$750.00 security deposit.

Analysis

In this case regarding the landlord's monetary claim, I find based upon the undisputed affirmed evidence of the landlord that the tenants' failed to pay rent of \$1,350.00 for December 2016. The tenants provided affirmed testimony that they did not pay December 2016 rent. As such, I find that the landlord has been successful in this portion of the landlord's claim.

I find that the tenants failed to provide proper notice to end the tenancy as claimed by the landlord. The landlord provided undisputed affirmed testimony that verbal notice

was received on December 31, 2016 from the tenants. However, the landlord has also provided undisputed affirmed testimony that no efforts were made to try and re-rent the rental premises for January 2017. 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...

Efforts to minimize the loss must be "reasonable" in the circumstances. What is reasonable may vary depending on such factors as where the rental unit or site is located and the nature of the rental unit or site. The party who suffers the loss need not do everything possible to minimize the loss, or incur excessive costs in the process of mitigation.

The Legislation requires the party seeking damages to show that reasonable efforts were made to reduce or prevent the loss claimed.

I find that although the landlord was the victim of the tenants failing to provide proper notice to end the tenancy, the landlord failed to act reasonably by trying to minimize any possible losses. As such, this portion of the landlord's claim is dismissed.

In the case of the tenants' claims, I find that the tenants have failed to provide sufficient evidence to establish their claim. 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. When a party makes a claim for damage or loss the burden of proof lies with the applicant to establish their claim. To prove a loss the applicant must satisfy the following four elements:

1. Proof that the damage or loss exists,
2. Proof that the damage or loss occurred due to the actions or neglect of the other party in violation of the Act, Regulation or tenancy agreement,
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage, and
4. Proof that the applicant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

In this case, the tenants provided disputed testimony that the rental unit was provided to them at the beginning of the tenancy dirty requiring cleaning. The tenants also seek compensation for moving expenses, loss of food due to a deficient refrigerator, installation costs for telephone services and other expenses. The tenants provided no details of these other expenses nor have the tenants provided sufficient evidence to support their claims that the landlord was notified of these issues yet chose to ignore them. The landlord has disputed that at no time were they notified of an issue with the refrigerator of the tenancy. I find that the tenants have failed to provide sufficient evidence that the landlord was notified of these issues to allow the landlord an opportunity to address them. I also find that as the tenants vacated the rental premises on December 24, 2016 voluntarily without giving the landlord an opportunity to address any issues that the tenants are not entitled to any costs relating to vacating the rental premises. The tenant's application is dismissed.

The landlord has established a monetary claim of \$1,350.00.

I find that as the landlord has been substantially successful in the application for dispute that the landlord is entitled to recovery of the \$100.00 filing fee. I also authorize the landlord to retain the \$750.00 security deposit in partial satisfaction of the claim.

Conclusion

The tenants' application is dismissed.

The landlord is granted a monetary order for \$700.00.

This order must be served upon the tenants. Should the tenants 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: June 27, 2017

Residential Tenancy Branch