



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: FF MNR MNDC MNSD

Introduction

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

- a monetary order for unpaid rent, 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;
- a monetary order for damage to the unit, site, or property, money owed or compensation for loss under the *Act*, regulation or tenancy agreement pursuant to section 67; and
- authorization to recover the filing fee for this application, pursuant to section 72

While the landlord's agent, WM, attended the hearing by way of conference call, the tenants did not. Although this hearing lasted until 2:47 p.m., the tenants did not participate in this hearing scheduled for 2:00 p.m. The landlord's agent was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

A hearing was previously scheduled for February 8, 2017 in response to an application filed by the tenants for the return of their security deposit and recovery of the filing fee. The Arbitrator presiding over that hearing dismissed the application with leave to reapply as the Arbitrator was not satisfied that the tenants had provided the landlord with their forwarding address.

As both parties were present during the February 8, 2017 hearing, the tenants' new forwarding address was confirmed during the hearing. The Arbitrator informed the landlord that they had 15 days from the date of the hearing, until February 23, 2017 to either return the security deposit to the tenants, obtain written consent to deduct a portion or keep the deposit, or make an Application to retain a portion or all of it.

The landlord filed their Application for Dispute Resolution on February 22, 2017, within 15 days of having received the tenants' new forwarding address. The landlord's agent testified that the tenants were served with the landlord's application for dispute resolution hearing package on March 9, 2017, by way of registered mail. The landlord provided a Canada Post tracking number. In accordance with sections 89 and 90 of the *Act*, I find that the tenants were deemed served with the landlord's application on March 14, 2017, five days after its registered mailing. The hearing proceeded in the absence of the tenants.

Issue(s) to be Decided

Is the landlord entitled to monetary compensation for unpaid rent?

Is the landlord entitled to monetary compensation for damage to the unit, site, or property, monetary loss, or money owed?

Is the landlord entitled to retain all or a portion of the tenants' security deposit in partial satisfaction of the monetary award requested?

Is the landlord entitled to recover the filing fee for this application from the tenants pursuant to section 72 of the *Act*?

Background and Evidence

The landlord's agent testified regarding the following facts. This fixed-term tenancy began on August 1, 2015, and was to end on May 30, 2016. The tenants moved out one month early, on April 30, 2016. Monthly rent was set at \$800.00, and the landlord collected a security deposit of \$400.00, which the landlord still holds. A copy of the tenancy agreement was included in the landlord's evidence.

The landlord is seeking \$1,333.00 in unpaid rent as the tenant moved in 20 days early, and vacated the rental unit a month before the tenancy was supposed to end. The landlord included a typed letter from the tenant WJ, dated July 10, 2015, which stated that "I inspect the...it is beautiful and a very good conditions house, with brand-new furnitures, I will respect the lease agreement of RTO, and will make same conditions when move out. I also request to move in earlier 20 days, and I get the key in 2015 July 10 and will move in 2015 July 10, and will pay...welfare check for the 20 days rent separate".

The landlord requested monetary compensation as follows:

Damage to bed frame	\$315.00
Stolen Mattress	355.00
Damaged Washing Machine & Dryer	9,800.00
4 months vacancy at \$5,000.00/month	20,000.00
Unpaid BC Hydro Bill	335.00
Unpaid Gas Bill	217.00
Less Security Deposit	-400.00
Recovery of Filing Fee	100.00
Unpaid Rent for early move-in, and move-out	1,333.00
Total Monetary Award Requested	\$32,055.00

Although the items listed above exceed the \$25,000.00 limit allowable under the Act, the landlord, in their application, requested \$24,900.00 plus \$100.00 for recovery of the filing fee, taking in consideration this limit. The landlord testified that the tenants caused considerable damage to the unit, which took over four months to repair, from June 2016 to September 2016. As the landlord cannot ask for consideration of compensation for items in excess of the then \$25,000.00 limit that could be considered under the Act, I have reduced the landlord's claim for "4 months vacancy at \$5,000.00/month" from a total of \$20,000.00 to \$12,945.00. The landlord provided, in evidence, some photos of the condition of the suite, but did not provide any receipts, estimates, invoices, or witness testimony. The landlord did not provide any invoices for the unpaid utility bills

The landlord rented the entire house for \$4,800.00 per month at the end of October 2016. This tenancy was for only the main floor of the home at \$800.00 per month.

The landlord testified that no move-out inspection was done as the tenants had moved out without any notice. The forwarding address was confirmed at the previous hearing.

Analysis

Section 44 of the *Residential Tenancy Act* reads in part as follows:

44 (1) A tenancy ends only if one or more of the following applies:

(a) the tenant or landlord gives notice to end the tenancy in accordance with one of the following:...

(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;...

Section 45(2) deals with a Tenant's notice in the case of a fixed term tenancy:

45 (2) *A tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that*

(a) is not earlier than one month after the date the landlord receives the notice,

(b) is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and

(c) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

The landlord provided undisputed evidence at this hearing, as the tenants did not attend. I find that the tenants had moved out prior to the end of this fixed term tenancy, in a manner that does not comply with the *Act*, as stated above. The landlord did not mutually agree to end this tenancy in writing, nor did the tenants obtain an order from the Residential Tenancy Branch for an early termination of this fixed term tenancy. No applications for dispute resolution have been filed by the tenants in regards to this tenancy. The tenants moved out a month earlier than the date specified in the tenancy agreement.

The evidence is clear that the tenants did not comply with the *Act* in ending this fixed term tenancy, and I therefore, find that the tenants vacated the rental unit contrary to Sections 44 and 45 of the *Act*.

I find further that the evidence shows that as a result of the tenants' early termination of this tenancy, the landlord suffered a rental loss. The evidence of the landlord is that they were able to re-rent after four months of repairs. I note, however, that the entire home was rented for \$4,800.00 per month, and this dispute is regarding a tenancy for the main floor only. The landlord also made a monetary claim for the tenant's early move-in date, which was requested by the tenants in writing. I note that no monetary compensation or agreement was provided to support that the landlord required payment

for this early-move in. I am satisfied that the landlord had made some efforts to mitigate the tenants' exposure to the landlord's monetary loss of rent for May 2016, as is required by section 7(2) of the *Act*, but I find that the landlord did not establish how the tenants had contributed to rental loss for the entire home. I, therefore, allow a portion of the landlord's claim for a monetary order for rental differential loss in the sum of \$800.00 for the month of lost rental income due to the early termination of this tenancy.

It was undisputed by both parties that the tenants had moved in early. The landlords provided a letter in evidence stating that the tenants requested to move in 20 days earlier, and that they would pay "for the 20 days rent separate". The landlord, however, did not provide any evidence to support that the tenants had failed to make this payment as agreed upon. In the absence of supporting evidence, I am not allowing the landlord's monetary application for compensation for the early move-in.

When making a claim for damages under a tenancy agreement or the *Act*, the party making the claim has the burden of proving their claim. Proving a claim in damages includes establishing that damage or loss occurred; establishing that the damage or loss was the result of a breach of the tenancy agreement or *Act*; establishing the amount of the loss or damage; and establishing that the party claiming damages took reasonable steps to mitigate their loss.

Section 37(2)(a) of the *Act* stipulates that when a tenant vacates a rental unit the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear. Although I find that the tenants had failed to give proper notice to the landlord so that the landlord may perform a proper move-out inspection, I find that the landlord did not provide sufficient evidence to support their claim. The landlord provided, in evidence, some black and white printed photos. These photos are not accompanied by any labels, dates, or detailed descriptions to support the landlord's monetary claim. The landlord did not provide any receipts, estimates, invoices, or witness testimony. In the absence of these things, I find that the landlord failed to provide sufficient evidence to support the value of the loss that the landlord suffered. Accordingly, this portion of the landlord's monetary claim is dismissed.

The landlord continues to hold the tenants' security deposit of \$400.00. In accordance with the offsetting provisions of section 72 of the *Act*, I order the landlord to retain the tenants' security deposit of \$400.00 in partial satisfaction of the monetary claim.

As the landlord was not completely successful in their application, I am allowing partial recovery of the filing fee for this application in the amount of \$50.00.

Conclusion

I issue a Monetary Order in the amount of \$450.00 in the landlord's favour, which allows a monetary award for the tenants' failure to comply with sections 44 and 45 of the *Act*, and allows the landlord to retain the security deposit in partial satisfaction of the monetary claim, plus recover half of the filing fee.

The landlord is provided with this Order in the above terms and the tenants must be served with a copy of this Order as soon as possible. Should the tenants fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

The remainder of the landlord's monetary application is dismissed.

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 5, 2017

Residential Tenancy Branch