



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 (the "Application") seeking remedy under the *Residential Tenancy Act* (the "Act"). The landlord applied 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 tenant's security deposit, and to recover the cost of the filing fee.

The landlord and the tenant attended the teleconference hearing. The hearing process was explained to the parties and an opportunity to ask questions about the hearing process was provided to the parties.

The landlord confirmed that she did not serve the USB digital evidence on the tenant. As a result, I find the landlord failed to comply with the Rules of Procedure and the landlord's digital evidence has been excluded in full as a result. The tenant confirmed that she did not serve any documentary evidence on the landlord in response to the landlord's Application.

Issues to be Decided

- Is the landlord entitled to a monetary order under the Act, and if so, in what amount?
- What should happen to the tenant's security deposit under the Act?

Background and Evidence

A copy of the tenancy agreement was submitted in evidence. A fixed-term tenancy began on January 1, 2016 and was scheduled to end on December 31, 2016. The parties confirmed that the tenant moved out of the rental unit on November 30, 2016.

The monthly rent was \$1,200.00 per month and due on the first day of each month. The tenant paid the landlord a \$600.00 security deposit which the landlord continues to hold.

The landlord's monetary claim of \$1,400.00 actually totals \$1,380.00 due to an adding error on the part of the landlord and is comprised as follows:

ITEM DESCRIPTION	AMOUNT CLAIMED
1. Loss of 18 days of rent	\$550.00
2. Cleaning costs (5 hours at \$40.00 per hour which is two cleaners at \$20.00 per hour)	\$200.00
3. Request for pet damage deposit	\$300.00
4. Time and inconvenience to landlord to find new tenants and to clean rental unit	\$230.00
5. Filing fee	\$100.00
TOTAL	\$1,380.00

Firstly, the tenant did not agree to any of the items claimed by the landlord.

Item 1

Regarding item 1, the landlord has claimed \$550.00 for the loss of December 1-17, 2016 as the tenant breached her fixed term tenancy and vacated on November 30, 2016 instead of December 31, 2016. The tenant testified that she moved out on November 30, 2016 due to "mould"; however confirmed she did not write a letter to the landlord and instead just texted the landlord before she moved out. The tenant did not submit any supporting documentary evidence to support her claim of mould. The landlord stated that she was able to secure new tenants effective December 18, 2016 and that she received \$625.00 from the new tenants. As monthly rent was \$1,200.00 per month which would leave the landlord with a loss of December 1-17, 2016 rent of \$575.00; however, the landlord has only claimed for \$550.00 for loss of rent for December 1-17, 2016.

Item 2

Regarding item 2, the landlord has claimed \$200.00 for 5 hours of cleaning at \$20.00 per hour for two people. The tenant testified that she did not clean the rental unit completely before vacating the rental unit.

Item 3

Regarding item 3, the landlord has claimed \$300.00 for a pet damage deposit that the tenant did not pay at the start of the tenancy which was dismissed during the tenancy as moot. The tenancy has already ended and the only remedy under the *Act* would have been to issue a 1 Month Notice to End Tenancy for Cause during the tenancy citing that the tenant failed to pay a pet damage deposit which the landlord failed to do. As a result, I find this portion of the landlord's claim is now moot and is dismissed without leave to reapply.

Item 4

Regarding item 4, the landlord has claimed \$230.00 for the cost of "time and inconvenience" related to the tenant breaching a fixed term tenancy which resulted in the landlord having to re-rent the rental unit earlier than anticipated. Neither party submitted a copy of the tenancy agreement to prove that it contained liquidated damages clause that included a genuine estimate of an agreed-upon amount which was signed by both parties at the start of the tenancy.

Item 5

Regarding item 5, this item relates to the filing fee which will be addressed later in this decision.

Analysis

Based on the testimony of the parties provided during the hearing, the documentary evidence and on the balance of probabilities, I find the following.

Test for damages or loss

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of

probabilities. Awards for compensation are provided in sections 7 and 67 of the *Act*. Accordingly, an applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did what was reasonable to minimize the damage or loss.

In this instance, the burden of proof is on the landlord to prove the existence of the damage/loss and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the tenant. Once that has been established, the landlord must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the landlord did what was reasonable to minimize the damage or losses that were incurred.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

Item 1 - The landlord has claimed \$550.00 for the loss of December 1-17, 2016 as the tenant breached her fixed term tenancy and vacated on November 30, 2016 instead of December 31, 2016. The tenant testified that she moved out on November 30, 2016 due to “mould”; however confirmed she did not write a letter to the landlord and instead just texted the landlord before she moved out. The tenant did not submit any supporting documentary evidence to support her claim of mould.

Based on the above, I find that section 45(2) applies and states:

Tenant's notice

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.

[My emphasis added]

Based on the above, I find the tenant breached section 45(2) of the *Act* as the tenant was not entitled to breach the fixed term tenancy by vacating early. If the tenant was attempting to claim a mould problem, the tenant would have had to comply with section 45(3) of the *Act* which includes that the tenant would have had to provide the landlord with notice of the alleged mould or other material breach of the tenancy agreement and provide the landlord with reasonable time to address the concern(s). There was no evidence before me that the tenant wrote a letter to the landlord to document her concerns or give the landlord a reasonable time to address any mould concerns. Therefore, I find the landlord has met the burden of proof and I grant the landlord **\$550.00** as claimed for loss of rent from December 1-17, 2016.

Item 2 - The landlord has claimed \$200.00 for 5 hours of cleaning at \$20.00 per hour for two people which I find to be reasonable. I have taken into account the tenant's testimony that she did not clean the rental unit completely before vacating. As a result, I find the tenant breached section 37 of the *Act* which requires to the tenant to clean the rental unit and leave it in reasonable clean condition at the end of the tenancy, less reasonable wear and tear. Therefore, I find the landlord has met the burden of proof and I grant the landlord **\$200.00** as claimed for this portion of their claim.

Item 3 – As described above, this item was dismissed as it is now moot given that the tenancy has ended.

Item 4 – The landlord has claimed \$230.00 for the cost of “time and inconvenience” related to the tenant breaching a fixed term tenancy which resulted in the landlord having to re-rent the rental unit earlier than anticipated. As neither party submitted a copy of the tenancy agreement to prove that it contained liquidated damages clause I dismissed with portion of the landlord's claim as I find the landlord has failed to meet part three of the test for damages or loss. For a liquidated damages clause to be enforceable, it must be a genuine estimate of an agreed-upon amount which was signed by both parties at the start of the tenancy. There was no evidence of a liquidated damages clause before me. Therefore, I dismiss this portion of the landlord's claim due to insufficient evidence, without leave to reapply.

Item 5 - As the landlord's application had merit, I grant the landlord the recovery of the cost of the filing fee in the amount of **\$100.00**.

I find that the landlords have established a total monetary claim in the amount of **\$850.00** comprised of \$550.00 for item 1, \$200.00 for item 2, and \$100.00 for item 5.

As the landlord has claimed against the tenant's security deposit of \$600.00 which has accrued no interest to date and pursuant to section 72 of the *Act*, I authorize the landlord to retain the tenant's full \$600.00 security deposit in partial satisfaction of the landlord's monetary claim. I grant the landlord a monetary order under section 67 for the balance owing by tenant to the landlord in the amount of **\$250.00**.

Conclusion

The landlord's application is partially successful.

The landlord has established a total monetary claim in the amount of \$850.00. The landlord has been authorized to retain the tenant's full \$600.00 security deposit in partial satisfaction of the landlord's monetary claim. The landlord has also been granted a monetary order under section 67 for the balance owing by tenant to the landlord in the amount of \$250.00. Should the landlord require enforcement of the monetary order, the monetary order must first be served on the tenant and the order may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

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: June 19, 2017

Residential Tenancy Branch