



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

MND MNR MNSD FF

Introduction

This hearing was convened as a result of the landlords' application for dispute resolution under the *Residential Tenancy Act* (the "Act") for a monetary order for unpaid rent or utilities, for damage to the unit, site or property, to retain all or a part of the tenants' security deposit, and to recover the cost of the filing fee.

Landlord A.D.R. (the "landlord") attended the teleconference hearing and gave affirmed testimony. During the hearing the landlord was given the opportunity to provide her evidence orally. A summary of the evidence is provided below and includes only that which is relevant to the hearing.

As the tenants did not attend the hearing, service of the Notice of a Dispute Resolution Hearing (the "Notice of Hearing"), Application for Dispute Resolution (the "Application") and documentary evidence were considered. The landlord testified that the Notice of Hearing, Application and documentary evidence were served on the tenants by registered mail on December 8, 2016 with one package addressed to each tenant. Two registered mail tracking numbers were submitted in evidence which have been included on the cover page of this decision for ease of reference. According to the online registered mail tracking website, both registered mail packages were signed for and accepted on December 20, 2016. Based on the above, I find that the tenants were served on December 20, 2016, the date both registered mail packages were signed for and accepted. As I am satisfied the tenants were duly served and did not attend the hearing, the hearing continued without the tenants present.

Issues to be Decided

- Are the landlords entitled to a monetary order under the *Act*, and if so, in what amount?
- What should happen to the tenants' security deposit under the *Act*?

Background and Evidence

A copy of the tenancy agreement was submitted in evidence. A fixed term tenancy began on May 1, 2016 and was scheduled to end on April 30, 2017 and required the tenants to provide vacant possession of the rental unit back to the landlord as of April 30, 2017. Monthly rent was \$1,500.00 per month and was due on the first day of each month. The landlord confirmed that

the tenants paid a \$750.00 security deposit at the start of the tenancy which is supported by the tenancy agreement. The landlords continue to hold the tenants' security deposit.

The landlords' monetary claim for \$2,250.00 is comprised as follows and contained a mathematical error, which I had addressed below:

ITEM DESCRIPTION	AMOUNT CLAIMED
1. Cost to replace damaged couch	\$900.00
2. Replacement of bedding	\$90.75
3. Loss of December 2016 rent	\$1,500.00
TOTAL	\$2,490.75

As the tenants were served with an Application that indicated that the amount being claimed by the landlords was \$2,250.00 I find the tenants would be prejudiced if I were to allow the landlords to increase their monetary claim to \$2,490.75. While the Rules of Procedure allow for an applicant to amend their Application, the landlords failed to amend their Application in accordance with the Rules of Procedure. As a result, the landlord indicated that she would be limited to the original claimed amount of \$2,250.00 or could withdraw their Application in full and start the application process from the beginning with a brand new application. The landlord stated that she would prefer to continue with her limited claim of \$2,250.00. The landlord stated that she understood that she is not permitted to split up her claim as indicated in the Rules of Procedure and that she would not be permitted to reapply for an additional amount for this tenancy. The landlord stated that she understood and would like to proceed with the \$2,250.00 amount and confirmed that she understood that if she was fully successful with her claim, the maximum amount could be \$2,250.00 before the filing fee is applied.

Regarding item 1, the landlords have claimed \$911.25 for the cost to replace a couch that was damaged by the tenants as the rental unit was rental as furnished, according to the landlord. The landlords submitted a copy of the furnished items list and on that list the black leather couch is listed as "good" at the start of the tenancy. The landlords submitted a colour photo in evidence which supports that the leather couch was damaged and the closest replacement couch would be \$911.25, the invoice of which was also submitted in evidence in support of the landlord's claim. The landlords submitted both before and after photos of the couch for consideration.

Regarding item 2, the landlord testified that the tenants failed to return 2 new pillows, 2 pillows covers, a non-skid mat and two hand towels. The landlords provided an invoice in evidence supporting that the landlords spent \$90.75 to replace these specific items.

Regarding item 3, the landlords have claimed for the loss of rent for December 2016 in the amount of \$1,500.00 due to the tenants breaching the fixed term tenancy agreement. The landlord testified that the tenants sent them an email before they vacated the rental unit on

November 29, 2016 and that the tenants failed to attend for the outgoing condition inspection report. The tenants provided their forwarding address by email on December 4, 2016 according to the landlord and the landlord filed for dispute resolution on December 7, 2016.

Analysis

Based on the undisputed documentary evidence and undisputed testimony of the landlord, and on the balance of probabilities, I find the following.

As the tenants were served with the Notice of Hearing, Application and documentary evidence and did not attend the hearing, I consider this matter to be unopposed by the tenants. As a result, and taking into account that I find the landlords' evidence and testimony support their full monetary claim, I find the landlords' application is fully successful in the amount of **\$2,250.00**. I note that this is the maximum amount I can award to the landlords before applying the filing fee, as the landlords did not amend their application for a higher amount.

In reaching this finding I have considered the photographic evidence, tenancy agreement, furnished items list and other documents. In addition, I find that the tenants breached sections 45(2), 37 and 26 of the *Act*. Section 45(2) of the *Act* requires that tenants not end a fixed term tenancy like the tenants did in the matter before me which was before the end of the fixed term and without written permission from the landlord to end the fixed term tenancy early. Section 37 of the *Act* requires that a tenant leave the rental unit in a reasonably clean condition less reasonable wear and tear and I find that the photo evidence supports that the tenants breached section 37 by damaging the rental unit leather couch. Section 26 of the *Act* requires that tenants pay rent on the date in which it is due in accordance with the tenancy agreement. Based on the undisputed evidence before me, I find the tenants breached section 26 of the *Act* by breaching the fixed term tenancy by failing to pay for December 2016 rent.

As the landlords' claim is successful, I grant the landlords the recovery of the cost of the filing fee in the amount of **\$100.00**. Based on the above, I find the landlords have established a total monetary claim of **\$2,350.00** comprised of \$911.25 for item 1, \$90.75 for item 2, and the remainder up to the maximum claimed amount for item 3 for a total of \$2,250.00 plus the recovery of the cost of the \$100.00 filing fee which I am permitting to add to the claim total pursuant to section 72 of the *Act*.

As the landlords applied within 15 days of being served with the tenants' forwarding address by email, and pursuant to section 72 of the *Act*, I authorize the landlords to retain the tenants' full security deposit of \$750.00 which has accrued no interest to date in partial satisfaction of the landlords' monetary claim. I grant the landlords a monetary order pursuant to section 67 of the *Act*, for the balance owing by the tenants to the landlords in the amount of **\$1,600.00**.

Conclusion

The landlords' application is fully successful.

The landlords have established a total monetary claim of \$2,350.00 as described above. The landlords have been authorized to retain the tenants' full security deposit of \$750.00 in partial satisfaction of the landlords' monetary claim. The landlords have been granted a monetary order pursuant to section 67 for the balance owing by the tenants to the landlords in the amount of \$1,600.00. The landlords must serve the tenants with the monetary order and may enforce the monetary order in the Provincial Court (Small Claims Division).

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