



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND MNDC MNR MNSD FF

Introduction

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

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

The landlord's agent, SL, testified on behalf of the landlord in this hearing and was given full authority to do so by the landlord. Both parties were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

The tenants confirmed receipt of the landlord's application for dispute resolution hearing package ("Application"). In accordance with section 89 of the *Act*, I find the tenants were duly served with the landlord's Application. Both parties confirmed receipt of each other's evidentiary materials, which were duly served in accordance with section 88 of the *Act*.

Issues to be Decided

Is the landlord entitled to a monetary award for unpaid rent, damage and losses arising out of this tenancy?

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?

Background and Evidence

The landlord's agent testified regarding the following facts. This month-to-month tenancy began on March 1, 2014. Monthly rent was \$875.00 at the beginning of the tenancy, and increased to \$900.00 in September of 2016. The landlord collected, and still currently holds, a security deposit in the amount of \$437.00. A copy of the tenancy agreement was included in the evidence. The landlord believes the tenants abandoned the rental unit, ending the tenancy on or about December 22, 2016. The tenants provided a forwarding address on January 20, 2017.

The landlord's agent SL testified in this hearing that the landlord had issued the tenants twelve 10 Day Notices to End Tenancy on the following dates: December 6, 2016, November 7, 2016, October 5, 2016, September 7, 2016, August 5, 2016, July 11, 2016, June 7, 2016, May 5, 2016, April 6, 2016, March 7, 2016, February 5, 2016, and January 6, 2016. The 10 Day Notices were included in the landlord's evidence.

SL testified that at the end of December 2016 she had knocked on the tenants' door, and sensed something was strange as she could normally hear the tenants' dog barking. On January 9, 2017 notices were posted in advance for the annual inspection scheduled for January 11, 2017. The landlord entered the suite on January 11, 2017, and assumed the suite was abandoned as the tenants still had their belongings there, but there was nobody in the suite. The locks were changed that date. On January 24, 2017 the landlord received confirmation that the account in the tenants' name for the electricity was closed on December 23, 2016.

The landlord is seeking a Monetary Order in the amount of \$3,767.00 as outlined in the table below:

Item	Amount
October 2016 rent	\$651.00
November 2016 rent	900.00
December 2016 rent	900.00
Repairs to the wall	81.00

Cleaning	270.00
Carpet Cleaning (2 hours)	80.00
Drapery Cleaning	25.00
Junk Removal	760.00
Re-keying of dead bolt	55.00
Replacement of mail box & key	45.00
Total Monetary Order Requested	\$3,767.00

The landlord provided invoices for the above items, which the landlord's agent testified were the costs incurred due to the tenants' abandonment of the rental unit. The landlord requested recovery of the filing fee for this application, as well as to retain the tenants' security deposit in partial satisfaction of the monetary claim.

RB testified that the tenant DG came by on January 21, 2017 and RB left the suite open for eight to nine hours in order to allow the tenants to retrieve their belongings. The landlord's agent SL testified that the landlord held the tenants' items for 60 days. The suite was re-rented in February 2017, and the tenants' belongings were moved to the storage.

The tenants do not dispute the fact that they were issued the 10 Day Notices, or the fact that they owed outstanding rent. The tenants admitted that they withheld the rent as the landlord had failed to provide pest control for the issues in their unit. The tenants dispute the landlord's testimony that they had moved out, or abandoned the unit, stating that they decided to stay with relatives due to health concerns with their newborn and the conditions inside the suite due to a pest infestation. They testified they stayed with relatives since November 2016, and returned on about January 15, 2017 only to discover the locks had been changed. The tenants testified that they had lost their belongings, and that the landlords changed the locks without their permission.

Analysis

The tenants admitted that they failed to pay the rent in full, within five days of being deemed to have received the last 10 Day Notice dated December 6, 2016. The tenants did not make an application pursuant to section 46(4) of the *Act* within five days of being deemed to have received the 10 Day Notice. In accordance with section 46(5) of the *Act*, the failure of the tenants to take either of the above actions within five days led to the end of this tenancy on December 16, 2016, the effective date on the 10 Day Notice. In this case, this required the tenants and anyone on the premises to vacate the premises by December 16, 2016.

Section 57 of the *Act* states as follows:

What happens if a tenant does not leave when tenancy ended

57 (1) In this section:

"overholding tenant" means a tenant who continues to occupy a rental unit after the tenant's tenancy is ended.

(2) The landlord must not take actual possession of a rental unit that is occupied by an overholding tenant unless the landlord has a writ of possession issued under the Supreme Court Civil Rules.

The evidence is clear that this tenancy had ended, but the tenants dispute the fact that they had vacated the suite. The landlords issued several 10 Day Notices, but never applied for an Order of Possession.

Section 31 of the *Act* states as follows:

Prohibitions on changes to locks and other access

31 (1) A landlord must not change locks or other means that give access to residential property unless the landlord provides each tenant with new keys or other means that give access to the residential property.

(1.1) A landlord must not change locks or other means of access to a rental unit unless

(a) the tenant agrees to the change, and

(b) the landlord provides the tenant with new keys or other means of access to the rental unit.

By changing the locks on January 11, 2017, I find the landlord failed to comply with sections 31 and 57 of the *Act*.

Section 37(2) of the *Act* states that "when a tenant vacates a rental unit, the tenant must a) leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear and b) give the landlord all the keys or other means of access that are in the possession or control of the tenant and that allow access to and within the residential property". By changing the locks without permission of the tenants, or an Order to do so,

I find that the landlord impeded the ability of the tenants to fulfill their obligations of section 37 of the *Act*. On this basis, I dismiss the landlord's monetary claim for the cost of cleaning, junk removal, and re-keying.

Section 26 of the *Act*, in part, states as follows:

Rules about payment and non-payment of rent

26 (1) A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

The landlord provided undisputed evidence that the tenants only paid partial rent for the months of October 2016 through to December 2016. I accept the landlord's undisputed evidence, and I find that the landlord is entitled to \$2,451.00 in arrears for the above period.

The landlord continues to hold the tenants' security deposit in the amount of \$437.00. In accordance with the offsetting provisions of section 72 of the *Act*, I order the landlord to retain the tenants' security deposit in partial satisfaction of the monetary claim.

As the landlord was only partially successful in their application, I find the landlord is entitled to recover only half of the filing fee.

Conclusion

I issue a \$2,064.00 Monetary Order in favour of the landlords under the following terms, which allows the landlord to recover unpaid rent, and also allows the landlord to recover half of the filing fee for this application while retaining the tenants' security deposit in partial satisfaction of their monetary claim. The remainder of the landlord's monetary claim is dismissed.

Item	Amount
Unpaid Rent for October-December 2016	\$2,451.00
Recovery of Half the Filing Fee	50.00
Security Deposit	-437.00
Total Monetary Order	\$2,064.00

The tenant(s) must be served with this Order as soon as possible. Should the tenant(s) 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

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: July 26, 2017

Residential Tenancy Branch