



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MNDC, FF

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the 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 recover her filing fee for this application from the tenants pursuant to section 72.

Both parties attended the hearing via conference call and provided affirmed testimony. Both parties confirmed that the landlord served each of the tenants with the notice of hearing package and the submitted documentary evidence. Both parties also confirmed that the tenants served the landlord with their documentary evidence on April 28, 2017. Neither party raised any service issues. As both parties have attended and have confirmed receipt of the notice of hearing package and the submitted documentary evidence, I am satisfied that both parties have been properly served as per sections 88 and 89 of the Act.

Preliminary Issue

The tenants raised an argument that the Act did not apply as this was a vacation home rental.

Section 4 of the Act states in part that this Act does not apply to living accommodations occupied as vacation or travel accommodations.

The tenants stated that this was a verbal agreement which began on August 14, 2016 where the tenants would pay Bi-monthly rent of \$1,000.00 on the 1st day of each month and \$1,000.00 on the 15th day of each month. The tenants stated that because of this arrangement it was considered a vacation property arrangement. The landlord disputed this claim stating that this was a verbal agreement for a tenancy which began on August 14, 2016 on a month-to-month basis where the tenants paid rent bi-monthly, \$1,000.00 on the 1st and 15th day of each month (total monthly rent of \$2,000.00).

A definition of a vacation home is,

A dwelling other than the owner's primary residence that is used for recreational purposes, like vacations (hence the name). Because **vacation homes** are only used at certain times, many owners will rent out their **vacation homes** when they are not using them.

A review of the Residential Tenancy Branch File shows that the landlord has a separate mailing address listed as her primary residence compared to the dispute address. I also find that the tenants have failed to provide sufficient evidence to support the claim that this is a vacation home. As such, the tenants' claim of jurisdiction is dismissed. The hearing shall proceed.

Issue(s) to be Decided

Is the landlord entitled to a monetary order for unpaid rent, unpaid utilities, for money owed or compensation for damage or loss 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 applicant's claim and my findings are set out below.

Both parties provided verbal testimony that this tenancy began on August 14, 2016 in which the rent of \$2,000.00 was payable on the 1st and 15th day of each month for \$1,000.00 each. No security deposit was paid. Both parties agreed that the tenancy ended on January 15, 2017.

The landlord claims that the tenants failed to provide proper 1 month notice to end the tenancy by notifying the landlord on December 23, 2016 to end the tenancy on January 15, 2017. The tenants claim that notice to end the tenancy was given to the landlord on December 21, 2016 to end the tenancy on January 15, 2017.

The landlord seeks a monetary claim of \$1,827.12 which consists of:

\$1,000.00	Unpaid Rent/loss of rental income, ½ month
\$500.00	Cleaning
\$227.12	Unpaid Electricity
\$100.00	Filing Fee

In support of this claim the landlord has provided:

- A copy of the electrical bill dated February 1, 2017 for \$227.12 for the billing period January 5, 2017 to February 1, 2017.
- A copy of a handwritten receipt dated January 16, 2017 for \$1,000.00.

On the landlord's item of claim #1, the landlord stated that the tenants left the rental unit dirty at the end of tenancy requiring cleaning of 10 hours (2 people @ 5 hours each X \$25.00 per hour) for \$500.00. The tenants dispute this claim stating that the rental unit was left clean. The landlord stated that she had submitted a late evidence package containing a hand written receipt for \$500.00 in cleaning and that she did have photographs, but failed to retain them or submit them as evidence in this hearing.

On the landlord's item of claim #2, the landlord claims that the tenant failed to pay electricity bill costs of \$227.12. The landlord clarified because of the lack of proper notice the tenant is responsible for the tenancy (utilities) until a new tenancy could be found. The landlord relied upon a copy of the electrical bill dated February 1, 2017 for \$227.12 which shows the billing period for the invoice from January 5 to February 1, 2017. The tenants dispute this claim.

On the landlord's item of claim #3, the landlord claims that because the tenants failed to provide proper notice the landlord was unable to re-rent the unit and suffered a loss of rental income of \$1,000.00 for the period January 15 to January 31, 2017. The tenant's dispute this claim.

Analysis

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. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

In this case, I accept the affirmed testimony of both parties and find on a balance of probabilities that the landlord's first item of claim for \$500.00 in cleaning has failed. The tenant has disputed this claim, but more importantly the landlord has failed to provide sufficient evidence that the rental unit was left dirty requiring cleaning. I note that the landlord failed to provide any supporting evidence to substantiate the claim of

10 hours of cleaning being required. I also note that the landlord failed to provide any supporting evidence to show the condition of the rental unit (ie. A completed Condition Inspection Report for the move-in and the move-out) to clearly show a comparison of the rental unit before and after the tenants occupied the rental premises. This portion of the landlord's claim is dismissed.

On the second and third items, I find that the landlord has established a claim for unpaid utilities and the loss of rental income. Section 45 of the Act states in part that the tenant may give notice to end the tenancy effective on a date that is not earlier than one month after the date the landlord receives the notice and is the day before the day in the month that rent is payable under the tenancy agreement. In this case, under the tenant's claim of notice to end the tenancy given to the landlord on December 21, 2016 to end the tenancy on January 15, 2017 falls short of the required 1 month notice. As such, the landlord having being unable to re-rent the unit is entitled to recovery of the loss of rental income of \$1,000.00 for the period January 15 to January 31, 2017. I also find that as the tenants were responsible for this tenancy until January 31, 2017 that utilities are owed as claimed by the landlord for \$227.12.

The landlord has established a total monetary claim of \$1,227.12.

The landlord having been substantially successful in her application is entitled to recovery of the \$100.00 filing fee.

Conclusion

The landlord is granted a monetary order for \$1,327.12.

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: July 27, 2017

Residential Tenancy Branch