Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNR MNSD MNDC FF

Introduction:
Both parties attended the hearing and gave sworn testimony. They confirmed a Two
Month Notice to End Tenancy had resulted in the landlord obtaining an Order of
Possession effective April 16, 2017 and the tenants vacated; there was some dispute
about the move-out date. The parties confirmed the landlord served this Application for
Dispute Resolution by registered mail (number provided). I find that the tenant was
legally served with the documents according to sections 88 and 89 of the Act. The
landlord applies pursuant to the *Residential Tenancy Act* (the Act) for orders as follows:
a)   A monetary order pursuant to Sections 7, 45, 46 and 67 for unpaid rent and
damages; and
d)   An order to recover the filing fee pursuant to Section 72.

Issue(s) to be Decided:
Is the landlord entitled to compensation for unpaid rent and damages? If so, in what
amount?

Background and Evidence:
Both parties attended the hearing and were given opportunity to be heard, to present
evidence and to make submissions. The undisputed evidence is that the tenancy
commenced August 16, 2009, a security deposit of $840 and a pet damage deposit of
$840.were paid. The landlord has the deposits in trust. The tenants said they provided
their forwarding address in writing by email and the landlord said he received it on May
29, 2017 which was two days before he filed his Application. The tenants disagreed
and said they had emailed it earlier.

The landlord is claiming one and a half month's rent. He said he had a returned cheque
in July 2016 which the tenants never replaced so they were always a month behind. He
gave them a free month's rent at the end of the tenancy for March 15, 2017 to April 14,
2017. However, he states they did not vacate until April 24, 2017 when he got the key

returned. He said there were items left after the moving van left and garbage he had to remove and dump. The tenants said they had paid the rent for July 2015 and that was the month disputed by the landlord and invited me to view their email evidence to prove this. They said the moving receipt shows April 17, 2017, they moved and then cleaned for two days and gave the landlord the key. They said they were unable to load the garbage and the landlord agreed to take it away. There were no condition inspection reports done at move-in or move-out.

The landlord also claims damages of $1707.85 for flooring he had to replace. He said the flooring was carpet and predated the tenancy by 6 years, making it 14 years old at move-out. He also claimed compensation for registered mail. There were invoices in file but no summary of the monetary amount claimed. The tenant filed a booklet of evidence stating deficiencies in the tenancy, among other things. I told them that if they had a damage claim, they must submit their own application and declined to hear evidence of damages claimed by the tenant.

On the basis of the documentary and solemnly sworn evidence presented at the hearing, a decision has been reached.

Analysis
Monetary Order

I find the weight of the evidence is that the tenants moved their furnishings on April 17, 2017 but then took two days to clean the unit and returned the key on April 19, 2017. Although the landlord said it was not returned until April 24, 2017, I find insufficient evidence to support this allegation. I found the tenant's evidence credible and it was supported by their moving receipt. I find the landlord entitled to over holding rent for 4 days (April 16-19) for a total of $235.33($1765/30 =$58.83 x 4= $235.33). I find the tenant was required to return possession to the landlord by 1:00 p.m. on April 16, 2017 and they did not until April 19, 2017.

Regarding the landlord's claim for unpaid rent, I find his evidence in the hearing inconsistent with his documentary evidence. He said it was July 2016 rent that was unpaid but provided a copy of an NSF cheque for July **2015**. The tenant provided emails and a copy of an e transfer showing they paid the rent for July 2015. I find the evidence does not support the landlord' claim and I dismiss this portion of his claim.

In respect to the landlord's claim for damages, I find 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 whatever was reasonable to minimize the damage or loss.

Director's orders: compensation for damage or loss
67 Without limiting the general authority in section 62 (3) *[director's authority respecting dispute resolution proceedings]*, if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.
Section 67 of the Act does *not* give the director the authority to order a respondent to pay compensation to the applicant if damage or loss is not the result of the respondent's non-compliance with the Act, the regulations or a tenancy agreement.

Section 37 of the Act provides that a tenant must leave the unit reasonably clean and undamaged except for reasonable wear and tear. The Residential Policy Guideline assigns a useful life for elements in rental premises that is designed to account for reasonable wear and tear. The Guideline assigns a useful life of 10 years for carpets. Since this carpets were 14 years old at move-out, I find they had no remaining useful life so I find the landlord not entitled to compensation for replacement of his carpeted flooring. I dismiss this portion of his claim. However, I find the tenants violated section 37 of the Act by leaving garbage behind. I find the landlord is entitled to compensation for removal and disposal of this garbage. He provided no invoices of his cost so I find it reasonable to award him the nominal sum of $100 for garbage removal and disposal. Section 72 of the Act provides for compensation of $100 for the filing fee. No other costs for the process are allowed so I find the landlord not entitled to his claim for items such as registered mail to serve documents.

I find the tenants have $1680 in deposits with the landlord. They testified they emailed their forwarding address to the landlord and the landlord acknowledged receipt on May 29, 2017 (two days before filing his Application for Dispute Resolution). Although the tenants contended it was emailed on May 17, 2017, I find their emails were sent to a "P. F. which is not the name or email address given by the landlord in the hearing. Therefore, I accept the landlord's evidence that he did not receive the forwarding address until May 29, 2017. He filed his Application on May 31, 2017 which is within the 15 days permitted by section 38 of the Act to avoid the doubling provision. The tenants deposits will be used to set off the amount owing to the landlord and any balance will be refunded in a monetary order in their favour.

Conclusion:

I find the landlord is entitled to a monetary order as calculated below. I find the landlord is entitled to recover filing fees paid for this application.

Calculation of Monetary Award:

Over holding rent April 16-19	235.33
Garbage removal nominal award	100.00
Filing fee	100.00
Less security and pet damage deposits of the tenants	-1680.00
Balance is Monetary Order to Tenants	**-1244.67**

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: September 05, 2017

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Residential Tenancy Branch