



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

Code MNR, MND, MNSD, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord for a monetary order for unpaid rent or utilities, for damages to the unit, for an order to retain the security deposit in partial satisfaction of the claim and to recover the filing fee.

Both parties appeared, gave affirmed testimony, and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing.

The parties confirmed receipt of all evidence submissions and there were no disputes in relation to review of the evidence submissions.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts and issues in this decision.

Issues to be Decided

Is the landlord entitled to a monetary order for unpaid rent or utilities?

Is the landlord entitled to monetary compensation for damages?

Is the landlord entitled to retain the security deposit in partial satisfaction of the claim?

Background and Evidence

The parties entered into a fixed term tenancy that began on February 1, 2016. The fixed term was renewed on August 1, 2017 and was to expire on July 31, 2018. Rent in the amount of \$1,415.00 was payable on the first of each month. The tenants paid a security deposit of \$650.00. The tenancy ended on August 8, 2017.

The landlord claims as follows:

a.	Loss of rent for August 2017	\$1,141.13
b.	Unpaid utilities	\$ 100.00
c.	Management fees for breaking lease	\$ 707.50
d.	Advertising	\$ 21.00
e.	Cleaning	\$ 100.00
f.	Damages	\$ 486.00
g.	Mailing cost and management fee to attend hearing	\$ 125.10
h.	Filing fee	\$ 100.00
	Total claimed	\$2,780.73

Loss of rent for August 2017

The landlord's agent testified that the tenants failed to pay rent for August 2017, and the tenants were served with a notice to end tenancy. The agent stated that the tenants vacated the property on August 8, 2017.

The landlord's agent testified that they found a new renter for August 26, 2017. The landlord seeks to recover unpaid rent and loss rent in the prorated amount of \$1,141.13.

The tenants testified that they did not pay rent. The tenants stated that they were the ones that presented the new renter to the landlord.

Unpaid utilities

The landlord's agent withdrew this portion of the claim.

Management fees for breaking lease

During the hearing the parties agreed that the tenants would pay the amount of \$668.00 for the management fees.

Advertising

The landlord's agent testified that they seek to recover advertisement fees because the tenants breached their fixed term agreement and these are cost that they would not have incurred. The landlord seeks to recover the amount of \$21.00.

The tenants testified that the landlord already had a signed tenancy agreement on August 15, 2017, and the advertisement is dated August 16, 2017. The tenants stated they should not be responsible for this cost.

The landlord's agent responded that they were unsure about the new renter and decided that they should advertise to ensure they had a new renter available.

Cleaning

The landlord's agent testified that the tenants cleaned the unit; however, they failed to clean underneath the appliances. The agent stated the cleaner cleaned the premises to ensure it was ready for the new renter. The landlord seeks to recover the cost of \$100.00. Filed in evidence are photographs. Filed in evidence is a receipt.

The tenants testified that they left the rental unit clean. The tenants stated they did not pull out the appliance to clean underneath. The tenants stated they were worried that they would scratch the floor.

The landlord's agent stated that there are no special requirements needed to pullout the appliances.

Damages

The landlord's agent testified that the doorstops were removed and two of the doorstops were missing. The agent stated that there were several burnt out light bulbs and the glass light fixtures were removed. The landlord seeks to recover the cost of labour and materials in the amount of \$150.00.

The landlord's agent testified that the tenant's child used markers on one of the walls in the bedroom that has to be repainted. The landlord seeks to recover the estimated repair in the amount of \$105.00, plus GST.

The landlord's agent testified that the tenants barbeque also melted the vinyl siding. The landlord seeks to recover the estimate of the repair in the amount of \$190.00, plus GST.

Filed in support of the landlord is a receipt and photographs.

The tenants testified that the two missing doorstops were accidentally packed. The tenants stated that the light bulbs in the rental unit would burn out every 4 to 6 weeks. The tenants stated they left the glass light fixtures off, as they were not properly installed in the first place.

The tenants acknowledged that their child colored on the wall, which would not come off. The tenants agreed that the 2 hours of labour is reasonable. The tenants stated that there is a big bucket of paint for the rental unit under the stairs.

The tenants testified that they were told by the landlord were to place their barbeque. The tenants stated that the landlord did not inform them that heat would melt the siding.

Mailing cost and management fee to attend hearing

These fees are not recoverable under the Act. Both parties are responsible for their own costs associated with the hearing. I therefore heard no evidence on this matter.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

In a claim for damage or loss under the Act or tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities. In this case, the landlord has the burden of proof to prove their claim.

Section 7(1) of the Act states that if a landlord or tenant does not comply with the Act, regulation or tenancy agreement, the non-comply landlord or tenant must compensate the other for damage or loss that results.

Section 67 of the Act provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

Loss of rent for August 2017

Section 26 of the Residential Tenancy Act states:

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.

In this case the tenants' failed to pay rent and were served with a notice to end tenancy. I find the tenants breached the Act, when they failed to pay rent, and this caused losses to the landlord.

Since this was a fixed term tenancy, the tenants found a new renter, which was accepted by the landlord. The new renter took possession on August 26, 2017. I find the landlord is entitled to recover the loss of prorated rent from August 1, to August 25, 2017 in the amount of **\$1,141.13**.

Management fees for breaking lease

The parties agreed that the tenants would pay the amount of \$668.00 for the management fees. Therefore, I find the landlord is entitled to recover the management fees in the amount of **\$668.00**.

Advertising

I am not satisfied the tenants are responsible to pay advertisement fee's, as there was already a signed tenancy agreement with the new renter before the advertisement was placed. Therefore, I dismiss this portion of the landlord's claim.

Cleaning

I am satisfied that the tenants failed to clean underneath the appliances as required. However, I am not satisfied that the tenants are responsible to pay for the full amount of cleaning, as the tenants are only required to leave the unit reasonable clean, not ready for the next tenant. Therefore, I find an appropriate amount for compensation for cleaning underneath the appliances is the amount of **\$25.00**.

Damages

The tenants removed doorstoppers, and the glass light fixtures. Even if I accept the tenants' evidence that the light fixtures were not installed properly, the tenants were still required to leave them in the same condition as they were at the start of the tenancy. Further, the tenants did not replace the burnt out light bulbs.

I find the tenants breached the Act when they failed replace the doorstops, light fixtures and light bulbs, and this caused losses to the landlord. Therefore, I find the landlord is entitled to recover the cost for replacing and installing these items in the amount of **\$150.00**.

The tenants acknowledged that their child used markers on the wall, which would not wash off. I find the tenants breached the Act, when they failed to repair the wall, and this caused losses to the landlord. Therefore, I find the landlord is entitled to recover labour and GST in the amount of **\$52.50**.

However, I am not satisfied the landlord has incurred or will incur any cost for the paint. Therefore, I decline to award any compensation for paint.

I am not satisfied that the tenants were neglectful when using their barbeque. In this case, the tenants were told by the landlord were they could use the barbecue. The landlord did not provide the tenants with any information or cautions about the vinyl siding which would have been reasonable when informing the tenants to use this area for cooking. Therefore, I decline to award any compensation for the vinyl siding.

I find that the landlord has established a total monetary claim of **\$2,136.63** comprised of the above described amounts and the \$100.00 fee paid for this application.

I order that the landlord retain the security deposit and interest of **\$650.00** in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of **\$1,386.63**.

This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

Conclusion

The landlord is granted a monetary and may keep the security deposit in partial satisfaction of the claim and the landlord is granted a formal order for the balance due.

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: October 10, 2017

Residential Tenancy Branch