



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Code MNR, MND, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord for a monetary order for unpaid rent, for damages to the unit 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?

Is the landlord entitled to monetary compensation for damages?

Background and Evidence

The parties entered into a two year fixed term tenancy that began on May 1, 2013 and was to expire on April 30, 2015. Rent in the amount of \$2,750.00 was payable on the first of each month. The tenants paid a security deposit of \$1,375.00.

The landlord retained the amount of \$410.00 from the security deposit until their claim for damages was considered.

The landlord claims as follows:

a.	Loss of rent for April 2017	\$2,975.00
b.	Damages	\$ 410.00
	Total claimed	

Loss of rent for April 2017

The landlord testified that the parties agreed in writing to extend the fixed term agreement for a further 12 months, which was to expire on April 30, 2017. The landlord stated the tenants also provided postdate cheques confirming this agreement.

Filed in evidence is an email from the tenants dated January 10, 2016, which in part reads,

“After all our mutual commiseration, how about we agree to a rent of \$2975 per month for a **12 month lease extension**”.

[Reproduced as written]
[My Emphasis added]

The landlord responded to the tenants email. The email thread reads in part,

“Agreed and thanks”

[Reproduced as written]

The landlord testified that the on January 3, 2017, they informed the tenants that they would not be extending their lease past its current term of April 30, 2017.

The landlord testified that the tenants vacated on March 31, 2017, breaching their agreement. The landlord seeks to recover loss of rent in the amount of \$2,975.00.

The tenant testified that in the original tenancy agreement it states that any change or addition to the tenancy agreement must be in writing and initialled by the parties. The tenant stated that they did not initial any agreement to extend the lease and as a result the tenancy became a month-to-month.

The tenant testified that they ended the tenancy in accordance with the Act, when they sent the landlord an email on February 7, 2017.

The email reads as follows,

“J... and I will be moving out no later than end-Mar, timing TBA”

[Reproduced as written]

The tenant testified that they also had no choice but to move at the end of March 2017, as the landlord was not extending their lease. The tenant stated that they had a trip to Italy plan for the month of April 2017, which extended past April 30, 2017, and they had no choice other than to move in March 2017, as their trip was no refundable.

The tenant further submits, as the landlord was moving into the premises after their lease expired and they are entitled to receive compensation. The tenant confirmed in the hearing they did not receive a notice to end tenancy for landlord's use of property.

Damages

The landlord testified that the tenants caused damage to the mirror in bathroom. The landlord seeks to recover the amount of \$350.00. The landlord confirmed that they provided no photographs of the mirror to show the condition of the mirror at the start of the tenancy or photographs of the mirror at the end of the tenancy.

The landlord testified that the tenants were provided with three fobs at the start of the tenancy and only two fobs were returned. The landlord seeks to recover the value of the fob in the amount of \$60.00.

The tenant testified that they did not cause damage to the mirror. The tenant stated the mirror backing was wearing from normal wear and tear.

The tenant testified all three fobs were returned to the landlord. The tenant stated that they were given to the concierge, who provided them to the landlord. The tenant stated that the landlords own evidence, the envelope written by the concierge shows three were returned. Filed in evidence is an email from the concierge.

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.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

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 April 2017

Section 45 of the Residential Tenancy Act states: (fixed term)

45 (2) A tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that

(a) is not earlier than one month after the date the landlord receives the notice,

(b) is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and

(c) is the day before the day in the month, or in the other period on which the tenancy is based,

In this case, I am satisfied that the parties extended their fixed term agreement. This agreement is in writing as the terms are in an email, and although it does not contain their initials, it is clear that was the intent of the parties to extend the tenancy to April 30, 2017. The tenants followed this up by providing postdated cheques to the landlord.

Further, I find the tenant reasoning that it is not valid because it was not initial is not reasonable, since the tenants on the other hand want me to accept their email dated

February 7, 2017, as valid notice to end the tenancy. This email is not signed as required by the Act and does not provide an end date; "timing TBA" . This is not giving notice in accordance with the Act.

Furthermore, the evidence supports the only reasons the tenants did not remain in the rental unit until the end of April 2017, was because the landlord was not prepared to extend their lease to accommodate the tenants holiday.

The tenants had a booked trip to Italy, which that trip exceed their lease, and it was in the best interest of the tenants to move out prior to their trip, as their trip was no refundable.

I find based on the above, the tenants did breach their fixed term agreement and as a result the landlord suffered a loss of rent for April 2017. Therefore, I find the landlord is entitled to recover loss of rent for April 2017, in the amount of **\$2,975.00**.

The tenants should note the tenancy did not end based on a Two Month Notice to End Tenancy for Landlord's Use of Property. The tenancy ended by the expiry of a fixed term agreement, which the tenants moved out.

I find the tenants are not entitled to any compensation, as the tenancy did not receive a notice to end tenancy pursuant to section 49 of the Act. Just because the landlord moved into the premises at a later date, does not entitled a party to compensation as the landlord has the right to do whatever they want with their property once a tenancy has legally end.

Damages

Section 37 of the Residential Tenancy Act states:

37 (2) When a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.

I am not satisfied that the tenants caused damage to the mirror. The landlord provided no supporting evidence such as a move-in condition inspection report or a move-out condition report. I find the landlord has failed to meet the burden of proof. Therefore, I dismiss this portion of their claim.

I am not satisfied that the landlord did not receive three fobs. The envelope provided by the landlord as evidence was written by their concierge shows three fobs were returned., which was further confirmed by the concierge in an email. I find the landlord has failed to meet the burden of proof. Therefore, I dismiss this portion of their claim.

I find that the landlord has established a total monetary claim of **\$3,075.00** comprised of the above described amount and the \$100.00 fee paid for this application.

As the tenant provided their forwarding address in an email, which is not in an approved method of service under section 88 of the Act, I have no way to determine when their email was received by the landlord and there is no deemed service provision under the Act, for such service.

Therefore, I order that the landlord retain the balance of the security deposit in the amount of **\$410.00** in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of **\$2,665.00**.

This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court. The **tenants are cautioned** that costs of such enforcement are recoverable from the tenants.

Conclusion

The landlord is granted a monetary order and may keep the balance of 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 24, 2017

Residential Tenancy Branch