



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: FF MND MNR MNDC MNSD

Introduction

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

- a monetary order for unpaid rent, pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38;
- a monetary order for damage to the unit, site, or property, money owed or compensation for loss under the *Act*, regulation or tenancy agreement pursuant to section 67; and
- authorization to recover the filing fee for this application, pursuant to section 72

Both parties attended the hearing and 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 tenant confirmed receipt of the landlords' dispute resolution application ('Application'). In accordance with section 89 of the *Act*, I find that the tenant was duly served with the Application. All parties confirmed receipt of each other's evidentiary materials.

Issue(s) to be Decided

Are the landlords entitled to monetary compensation for unpaid rent?

Are the landlords entitled to monetary compensation for damage to the unit, site, or property, monetary loss, or money owed?

Are the landlords entitled to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary award requested?

Are the landlords entitled to recover the filing fee for this application from the tenant?

Background and Evidence

This fixed-term tenancy began on September 1, 2016, and was to end on September 1, 2017. A hearing was held on February 28, 2017, and both parties agreed that the tenancy would end on September 1, 2017. The tenant testified that she had moved out on July 23, 2017, and a forwarding address was provided on July 27, 2017. Monthly rent was set at \$1,100.00, and the landlords collected a security deposit of \$425.00, which the landlords still hold. A move out inspection was completed on July 28, 2017, although both parties confirmed that a move-in inspection was not done at the beginning of the tenancy, but rather on January 11, 2017.

The landlords requested monetary compensation as follows:

Item	
Light Bulbs	\$35.42
Pressure Wash & Repairs	1,260.00
Loss of Rent for August 2017	1,100.00
Repairs and Paint	1,400.00
Less Security Deposit	-425.00
Recovery of Filing Fee	100.00
Total Monetary Award Requested	\$3,470.00

During the hearing the tenant consented to the landlords retaining the \$425.00 security deposit. Accordingly I allow the landlords to retain \$425.00 in satisfaction of their monetary claim.

The landlords testified that the tenant had moved out on July 23, 2017 without giving any written notice of her intention to move out. The landlords were able to re-rent the suite for September 2017, at a rate of \$850.00 per month as a 1 bedroom suite. The landlords are seeking compensation of 1 month's rent in the amount of \$1,100.00 for August 2017 loss of rental income. The landlords testified that they had made efforts to re-rent the suite at the beginning of August 2017 due to the cleaning and repairs required.

The landlords testified that the home was seven years old, and the tenant was the second to live in the suite. The landlords made a claim for \$35.42 for 7 missing light bulbs.

The landlords submitted an invoice in the amount of \$1,260.00. \$400.00 was for pressure washing under the stairs, \$500.00 was for replacing 3 fence panels, and \$300.00 was for replacing the downstairs door. The landlords testified that the tenant had placed plants and junk under the stairs, which attracted bugs and dirt. The landlords testified that the tenant had also damaged the fence and the exterior door. The landlords did not witness the tenant damaging the fence or door, but testified that after the tenant's Christmas tree was removed, the landlords noticed there was damage to the fence. The landlords also believed the tenants had damaged the exterior door, although the tenant disputes this stating that it was the landlords who had rammed the door.

The landlords also submitted a quotation for painting and repairs in the amount of \$1,400.00. The landlords testified he had performed the work himself, and that the actual cost was \$300.00 for paint. The tenant testified that there were pre-existing marks on the wall from a previous tenant, which the landlords acknowledged, but testified that the tenant had created more marks on the wall.

Lastly the landlords requested the \$50.00 previously awarded in a hearing.

Analysis

When making a claim for damages under a tenancy agreement or the *Act*, the party making the claim has the burden of proving their claim. Proving a claim in damages includes establishing that damage or loss occurred; establishing that the damage or loss was the result of a breach of the tenancy agreement or *Act*; establishing the amount of the loss or damage; and establishing that the party claiming damages took reasonable steps to mitigate their loss.

Section 44 of the *Residential Tenancy Act* reads in part as follows:

44 (1) A tenancy ends only if one or more of the following applies:

(a) the tenant or landlords gives notice to end the tenancy in accordance with one of the following:...

(b) the tenancy agreement is a fixed term tenancy agreement that provides that the tenant will vacate the rental unit on the date specified as the end of the tenancy;

(c) the landlords and tenant agree in writing to end the tenancy;...

Section 45(2) deals with a Tenant's notice in the case of a fixed term tenancy:

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

(a) is not earlier than one month after the date the landlords 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, that rent is payable under the tenancy agreement.

The landlords provided undisputed evidence at this hearing that the tenant had not moved out in accordance with the *Act*. I find that the tenant had moved out prior to the end of this fixed term tenancy, in a manner that does not comply with the *Act*, as stated above. The landlords did not mutually agree to end this tenancy in writing, nor did the tenants obtain an order from the Residential Tenancy Branch for an early termination of this fixed term tenancy. No applications for dispute resolution have been filed by the tenant in regards to this tenancy. The tenant moved out approximately a month earlier than the date specified in the tenancy agreement.

The evidence is clear that the tenant did not comply with the *Act* in ending this fixed term tenancy, and I therefore, find that the tenant vacated the rental unit contrary to Sections 44 and 45 of the *Act*. The evidence of the landlords is that they were able to re-rent the suite, and the landlords is claiming one month's rent for loss of rental income for the month of August 2017. I am not satisfied that the landlords had made efforts to mitigate the tenant's exposure to the landlords' monetary loss of rent for August 2017, as is required by section 7(2) of the *Act* by listing and re-renting the suite as soon as possible. I, therefore, allow the landlords' monetary claim for one months' rent.

Section 37(2)(a) of the *Act* stipulates that when a tenant vacates a rental unit the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.

The landlords submitted a monetary claim for missing lightbulbs. I find that the landlords provided detailed submissions and a receipt to support this monetary claim. Accordingly I find that the landlords are entitled to \$35.42 for the missing lightbulbs.

The landlords also submitted a monetary claim in the amount of \$1,260.00. \$400.00 was for pressure washing the exterior for bugs and dirt. As this pertains to the exterior of the home that is exposed to a variety of weather conditions and elements, I find that within a ten month tenancy it is it would not be considered unreasonable for the area to be soiled with dirt and debris. On this basis, I dismiss this portion of the landlords' monetary claim.

The landlords also submitted a monetary claim for damaged fence panels and an exterior door. Although it was not undisputed that both were damaged, I find that the landlords have failed to provide sufficient supporting evidence to demonstrate that the tenant had caused this damage during this tenancy. Accordingly, this portion of the landlords' monetary claim is dismissed.

The landlords also submitted a monetary claim in the amount of \$1,400.00 for painting and repairs. The tenant testified that the landlords failed to perform a proper move-in inspection at the beginning of the tenancy as required by the *Act*, and there was pre-existing damage to the walls from a previous occupant. As the landlords failed to perform a move-in inspection at the beginning of this tenancy as required by section 23(1) of the *Act*, which states that "the landlords and tenant together must inspect the condition of the rental unit on the day the tenant is entitled to possession of the rental unit or on another mutually agreed da.", I have no way of ascertaining what damages occurred during this tenancy. Accordingly the landlords' monetary claim for painting and repairs is dismissed.

The landlords continue to hold the tenant's security deposit of \$425.00. In accordance with the offsetting provisions of section 72 of the *Act*, I order the landlords to retain the tenant's security deposit of \$425.00 in partial satisfaction of the monetary claim.

As the landlords were not completely successful in their application, I am allowing partial recovery of the filing fee for this application in the amount of \$50.00.

The landlords were previously awarded a \$50.00 monetary award in a previous hearing, which they re-applied for again in this hearing. I therefore find that this current application is *res judicata* meaning the matter has already been conclusively decided and cannot be decided again. Accordingly, I dismiss the landlords' application for \$50.00.

Conclusion

I issue a Monetary Order in the amount of \$760.42 in the landlords' favour under the following terms for the losses associated with this tenancy. I allow the landlords to retain the \$425.00 security deposit in satisfaction of their monetary claim. The landlords are also authorized to recover \$50.00 for the filing fee.

Item	Amount
Loss of Rental Income	\$1,100.00
Compensation for lightbulbs	35.42
Recovery of Filing Fee	50.00
Security Deposit	-425.00
Total Monetary Order	\$760.42

The landlords are provided with this Order in the above terms and the tenant must be served with a copy of this Order as soon as possible. Should the tenant 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.

The remainder of the landlords' monetary application is dismissed.

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: March 23, 2018

Residential Tenancy Branch