



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding HOMELIFE PENNINSULA PROPERTY MANAGEMENT
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNR, MND, MNDC, MNSD, FF

Introduction

On November 15, 2017, the Landlord submitted an Application for Dispute Resolution seeking a monetary order for unpaid rent and damage and to retain the security deposit in partial satisfaction of the claims. The matter was set for a conference call hearing.

The Landlord's agent ("the Landlord") attended the hearing; however, the Tenants did not. The Landlord testified that the Notice of Dispute Resolution Proceeding was sent to the Tenants on November 22, 2017, using registered mail that was sent to the address that the Tenants provided at the end of the tenancy. The Landlord sent the registered mail to each of the Tenants. The Landlord provided the registered mail receipt numbers in support of her testimony. The Landlord testified that the registered mail was picked up by the Tenants on November 30, 2017.

On June 8, 2018, the Landlord amended the claim by completing an amendment to an application for dispute resolution. The Landlord changed the amount of the monetary claim. The Landlord testified that the amended application document was sent to the Tenants on June 7, 2018, by registered mail.

I find that the Tenants were served with the Notice of Dispute Resolution Proceeding and the amendment to the application in accordance with sections 89 and 90 of the Act. The Tenants are deemed to have been served with the Notice of Dispute Resolution Proceeding five days after the Notices were sent using registered mail.

At the start of the hearing I introduced myself and the Landlord was provided with the opportunity to present affirmed oral testimony and to make submissions during the hearing.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

- Is the Landlord entitled to compensation due to unpaid rent and utilities?
- Is the Landlord entitled to compensation for damage to the rental unit?
- Is the Landlord entitled to keep the security deposit in partial satisfaction of her claims?

Background and Evidence

The Landlord testified that the tenancy began in May 2016, and was renewed in June 2017, for a one year fixed term. Rent in the amount of \$2,500.00 was due to be paid by the first day of each month. The Tenants paid the Landlord a security deposit of \$1,250.00. The Tenants are to pay 80% of the utility bills. The Landlord provided a copy of the tenancy agreement.

The Landlord is seeking compensation in the amount of \$5,079.95 for the following items:

November 2017 Rent	\$2,500.00
Utilities	\$269.60
Late fees	\$50.00
Garbage Removal /Disposal	\$232.16
Carpet Removal and Replacement	\$2,028.19

Loss of Rent \$2,500.00

The Landlord testified that on September 22, 2017, the Tenants gave notice to end the tenancy prior to the end of the fixed term. The Landlord testified that the Tenants moved out of the rental unit on October 31, 2017. The Landlord testified that the rental unit was advertised on their website and on a local website but they were unable to rent it out for the month of November 2017.

The Landlord submitted that the Tenants broke the lease and are responsible to pay the rent until the unit was able to be re-rented. The Landlord is seeking \$2,500.00 for a loss of rent for the month of November 2017.

Utilities

The Landlord provided a copy of a water bill dated August 31, 2017. The Landlord testified that the Tenants did not pay their portion of the bill and that they owe the amount of \$269.60.

Late Fees

The Landlord testified that the Tenants rent cheque for the month of November 2017 was returned as non-sufficient funds (NSF). The Landlord testified that the tenancy agreement includes the terms that a Landlord may charge a \$25.00 fee for NSF cheques and \$25.00 for late payment of rent. The Landlord is seeking \$50.00 from the Tenants.

Garbage Removal / Disposal

The Landlord is seeking to recover the amount of \$232.16 for the cost to remove garbage that the Tenants left behind and the cost of the dump fees. The Landlord hired a company to remove and dispose of the garbage. The Landlord provided a copy of an invoice dated November 14, 2017, in the amount of \$232.16.

Carpet Removal and Replacement

The Landlord is claiming compensation for the removal and purchase and installation of new carpet. The Landlord has not had the existing carpet removed and has not purchased a replacement carpet. The existing carpet remains in the unit and the unit has been re-rented.

The Landlord testified that the carpets were new as of May 2016. The Landlord testified that the carpets were damaged by pets and urine stained. The Landlord provided two photographs which only show a very small area of the carpet.

The Landlord provided invoices from May and June 2016, when the existing carpet was purchased as an estimate to support the amount of this claim.

Analysis

When making a claim for damages under a tenancy agreement or the Act, the party making the allegations has the burden of proving their claim. Proving a claim in

damages requires that it be established that the damage or loss occurred, that the damage or loss was a result of a breach of the tenancy agreement or Act, and proof that the party took all reasonable measures to mitigate their loss.

The Residential Tenancy Policy Guideline # 16 Claims in Damages states:

An arbitrator may award monetary compensation only as permitted by the Act or the common law. In situations where there has been damage or loss with respect to property, money or services, the value of the damage or loss is established by the evidence provided.

A party seeking compensation should present compelling evidence of the value of the damage or loss in question.

The Residential Tenancy Policy Guideline #3 Claims for Rent and Damages for Loss of Rent provides: Damages awarded are an amount sufficient to put the Landlord in the same position as if the Tenant had not breached the agreement. This includes compensating the Landlord for any loss of rent up to the earliest time that the tenant could legally have ended the tenancy. The landlord's claim is subject to the statutory duty to mitigate the loss by re-renting the premises at a reasonably economic rent.

After considering the testimony of the Landlord, and on balance of probabilities, I make the following findings:

Loss of Rent \$2,500.00

I find that the Tenants ended the fixed term tenancy early by moving out of the rental unit on October 31, 2017. I find that the Tenants did not pay the rent owing for November 2017. The Landlord took steps to lessen the loss by advertising the rental unit.

I award the Landlord the amount of \$2,500.00 for November 2017, rent.

Utilities \$269.60

I find that the tenancy agreement requires the Tenants to pay 80% of the water bill.

I award the Landlord the amount of \$269.60 for the unpaid water bill.

Late Fees \$50.00

I find that the tenancy agreement permits a charge of \$25.00 for NSF cheques and \$25.00 for late payments of rent.

I award the Landlord the amount of \$50.00.

Garbage Removal / Disposal \$232.16

I find that the Tenants are responsible for the costs to remove and dispose of garbage left behind on the rental property.

I award the Landlord the amount of \$232.16.

Carpet Removal and Replacement

I find that the Landlord has not provided sufficient evidence to support the value of the damage to the carpets. The Landlord's two photographs show very small areas of the carpets. The carpets have not been replaced and are still being used in the rental unit.

While I find that some damage occurred, there is insufficient evidence to support the amount of the loss being claimed.

I award the Landlord a nominal award of \$150.00 for damage to the carpets.

Security Deposit

The Landlord has applied to retain the security deposit of \$1,250.00 in partial satisfaction of the Landlord's claims.

Monetary Award

The Landlord has established a monetary claim in the amount of \$3,201.76.

Section 72 of the *Act* gives me authority to order the repayment of a fee for an application for dispute resolution. As the Landlord was successful with the application, I order the Tenants to repay the \$100.00 fee that the Landlord paid to make application for dispute resolution.

After setting off the security deposit of \$1,250.00 against the award of \$3,201.76 and the \$100.00 filing fee, I grant the Landlord a monetary order in the amount of \$2,051.76. The monetary order must be served on the Tenants and may be enforced in the Provincial Court.

Conclusion

The Landlord established a claim for compensation in the amount of \$3,201.76 due to a loss of rent, unpaid utilities, late fees, and damage.

The Landlord is authorized to retain the security deposit in partial satisfaction of the claims and is granted a monetary order for the balance of \$2,051.76.

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 4, 2018

Residential Tenancy Branch