



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

MNDC MND MNR MNSD FF

Introduction

This hearing was convened as a result of the Landlord's Application for Dispute Resolution. The participatory hearing was held, by teleconference, on July 9, 2018. The Landlord applied for multiple remedies, pursuant to the *Residential Tenancy Act* (the "Act").

The Landlord and the Tenants both attended the hearing and provided testimony. The Tenants sent their documentary evidence to the address the Landlord listed as the address for service on the Notice of Dispute Resolution, on June 26, 2018, by registered mail. I acknowledge that the Landlord stated he did not get this package. However, pursuant to section 88 and 90 of the Act, I find this evidence is deemed served 5 days after its registered mailing. I find the package was deemed served on July 1, 2018.

The Tenants acknowledged getting the Notice of Hearing package but the Landlord stated he did not serve his evidence to the Tenants. The Landlord also failed to provide any evidence to the Residential Tenancy Branch. As explained in the hearing, evidence must be exchanged in accordance with the rules of procedure. In this case, the Landlord failed to provide his evidence to the respondent or this office, and none of it will be admissible. The Landlord intended to rely on his oral testimony only.

During the hearing, the Landlord stated that he wished to withdraw his application on all of the grounds with the exception of his application for monetary compensation for unpaid rent and to withhold the security deposit to offset the unpaid rent. I hereby amend the Landlord's application, accordingly. The Landlord is granted leave to reapply for the remaining grounds at a later date.

Both parties were provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. 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.

Issue(s) to be Decided

- Is the Landlord entitled to compensation for unpaid rent or utilities?
- Is the Landlord entitled to keep the security deposit to offset the unpaid rent?

Background and Evidence

Both parties agreed that monthly rent was \$950.00. The Landlord testified that he holds a security deposit in the amount of \$900.00.

The Tenants stated that sometime in August of 2017, they received a 1 Month Notice to End Tenancy (the Notice) with an effective date of September 30, 2017. The Tenants stated that in order to get some extra time to move out, they disputed it with our office. The hearing was scheduled for November 22, 2017, but the Tenants managed to move out by the effective date of the Notice. The Tenants stated that they did a “midnight move” on the last day of September 2017 due to the degrading relationship with the Landlord. The Tenants stated they felt threatened by him.

The Tenants stated that they did not tell the Landlord they moved out because of how poor their relationship was. The Tenants stated that they left a few items behind because of how quickly they moved out but they left on September 30, 2017, and never returned. The Tenants acknowledge leaving a few things such as a couch, a filing cabinet, a bed, and some exercise equipment. The Tenants stated they left the keys on the counter.

The Landlord stated that he did not know the Tenants moved out of the rental unit when they did. The Landlord stated that since the Tenants disputed the Notice he gave them, he assumed that they were not going to move out. The Landlord stated that he never received rent on October 1, 2017, so he issued a 10 Day Notice to end tenancy for unpaid rent. The Landlord stated that he attended the house mid-October and he noticed that there were still some items left behind by the Tenants and he could not tell if there were still living there or not. The Landlord stated that he does not remember when he actually realized they had vacated the unit as he did not make note of when this occurred.

Analysis

A party that makes an application for monetary compensation against another party has the burden to prove their claim.

In this instance, the burden of proof is on the Landlord to prove the existence of the damage/loss and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the Tenants. Once that has been established, the Landlords must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the Landlord did everything possible to minimize the damage or losses that were incurred.

The Landlord is seeking to recover lost rent for October and November of 2017. In this case, I note the Landlord had given a 1-Month Notice to End Tenancy with an effective date of September 30, 2017, which would make it unnecessary for the Tenants to give the Landlord written notice that they are ending the tenancy on that date. However, the Tenants disputed this Notice, which signals to the Landlord that they may not move out, as per the Notice.

I note the Tenants did a “midnight move” at the end of September 2017, and left a few items behind. I also note the Tenants did not communicate with the Landlord in any way to tell them they had moved out. In this case, I find it reasonable that there would be some amount of confusion with respect to whether or not the Tenants had moved out, given the particulars of this scenario. After filing to dispute the Notice to End Tenancy, which signals that they might not move out as requested, I find the Tenants should have taken steps to communicate with the Landlord that they had in fact left at the end of September 2017.

By not communicating any of this, and leaving some of their belongings, the Landlord was not able to get into the unit, clean up and re-rent the space in a timely manner, as it was not clear whether or not they were still residing there. As such, I find the Tenants should be responsible for some of the rent the Landlord is looking for. However, I also note the Landlord had provided vague testimony and zero documentary evidence to show when exactly he established that the Tenants had moved out. It appears he determined that they had moved out sometime prior to the hearing on November 22, 2017, but after he issued the 10 Day Notice to End Tenancy for unpaid rent at the beginning of October.

Having considered all of this, I find it is reasonable that the Tenants should be responsible for October rent (\$950.00), since they failed to provide vacant possession, and communicate that they had actually left so that the Landlord could mitigate his losses and re-rent the space. That being said, I decline to award November 2017 rent to the Landlord because his testimony with respect to when he actually determined that the unit was vacant was vague. Although I think it is reasonable for the Landlord to be unsure about whether or not the Tenants had left in October 2017, I find the Landlord's unclear testimony on some of these points makes it difficult to determine whether or not he sufficiently mitigated his losses for November 2017.

In summary, I find the Landlord is entitled to \$950.00 for October 2017 rent.

Since the Landlord was partially successful in this application, I award him the recovery of half of the filing fee (\$50.00), pursuant to section 72 of the Act. In total, I award the Landlord \$1,000.00.

Also, pursuant to sections 72 of the Act, I authorize that the security deposit, currently held by the Landlord, be kept and used to offset the amount of rent still owed by the Tenants. In summary, I grant the monetary order based on the following:

Claim	Amount
Unpaid rent: October of 2017	\$950.00
Filing fee	\$50.00
Less: Security Deposit currently held by Landlord	(\$900.00)
TOTAL:	\$100.00

Conclusion

The Landlord is granted a monetary order pursuant to Section 67 in the amount of **\$100.00**. This order must be served on the Tenants. If the Tenants fail to comply with this order the Landlord may file the order in the Provincial Court (Small Claims) and be enforced as an order of that Court.

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 11, 2018

Residential Tenancy Branch