



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNR MND MNDC MNSD FF

Introduction:

Both parties attended the hearing and gave sworn or affirmed testimony. . The landlord testified that they served the Application for Dispute Resolution dated May 11, 2018 on the tenant by registered mail. The tenant confirmed receipt. I find the documents were legally served pursuant to section 89 of the Act. The landlord applies pursuant to the *Residential Tenancy Act* (the Act) for orders as follows:

- a) A monetary order pursuant to Sections 7, 46 and 67 for damages pursuant to section 45(2)(b) for breach of a fixed term lease and other damages;
- b) To retain the security deposit to offset the amount owing; and
- c) An order to recover the filing fee pursuant to Section 72.

Issue(s) to be Decided:

Has the landlord proved on a balance of probabilities that the tenant breached the lease and damaged the property and that it was beyond reasonable wear and tear? What is the cost of the losses incurred by the landlord? Is the landlord entitled to recover the filing fee?

Background and Evidence:

Both parties attended and were given opportunity to be heard, to present evidence and to make submissions. They agreed the tenancy commenced August 1, 2017 on a fixed term lease to July 31, 2018, that monthly rent was \$3000 and a security deposit of \$1500 was paid. The tenants vacated on April 30, 2018 after giving two months Notice of their intent on February 26, 2018. The tenant said he noticed the home was not advertised on March 7, 2018 and he informed the landlord then and again on March 27, 2018. It was advertised on March 29, 2018. The landlord said there was paperwork to do. They had enquiries and had to respond to numerous emails. The tenant said he handled the showing on April 20, 2018 and that prospect rented the unit as of June 1, 2018.

The landlord claims as follows:

- a) \$651 including (i) \$80 for wall repairs and painting; the landlord could give no details and did not know how old the paint was. The tenant did not recognize the damage claimed. The condition inspection report notes some damage on that wall at move-in and damage at move-out.
 - (ii) \$40 for vent covers; the landlord did not know how old they were. The tenant agreed they broke during the tenancy.
 - (iii) \$500 for cleaning. The tenant disagrees and said the carpet was dirty at move-in and they steam cleaned it then. They vacuumed but it may have needed some more after furniture moving. He cut the grass one week before move-out. The condition inspection report notes the unit's carpets were stained in bedrooms and stairwell at move-in and the unit was not clean at move-out. The tenant said he paid \$150 to clean the carpets at move-in because the previous tenant had pets and the carpets needed cleaning.
- b) \$3000: rental loss for May 2018 due to breach of the fixed term lease.
- c) \$1500: liquidated damages as provided in the lease for breach of the lease.

The tenant said the landlord did not explain the consequences when they proposed moving out early. He states the amounts charged are excessive and only admits to damaging the vent covers. He said the handyman of the landlord said it was okay for him to leave some things in the shed and storage area.

The tenant provided no documents to dispute the claim. On the basis of the documentary and solemnly sworn evidence, a decision has been reached.

Analysis

Monetary Order

Section 45(2) of the Act provides that a fixed term tenancy, even if the tenant gives notice, does not end until the end of the fixed term which in this case was July 31, 2018 and contract law obligates a tenant to the end of the term. I find the tenant breached his fixed term tenancy by vacating on April 30, 2018 after giving notice. However, a landlord is required to mitigate their damages by diligently trying to re-rent the unit as soon as possible. I find the landlord was able to re-rent the unit for June 1, 2018 so their claim is limited to \$3000 for rental loss for May 2018. I find them entitled to \$3000 rental loss.

The landlord also claims for damages. Awards for compensation are provided in sections 7 and 67 of the *Act*. Accordingly, an applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

Director's orders: compensation for damage or loss

67 Without limiting the general authority in section 62 (3) [*director's authority respecting dispute resolution proceedings*], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party. Section 67 of the Act does *not* give the director the authority to order a respondent to pay compensation to the applicant if damage or loss is not the result of the respondent's non-compliance with the Act, the regulations or a tenancy agreement.

The onus is on the landlord to prove on the balance of probabilities that there is damage caused by this tenant, that it is beyond reasonable wear and tear and the cost to cure the damage. I find the landlord's evidence is inconclusive in respect to the wall and vent repair. Residential Policy Guideline 40 assigns a useful life to items in rented property which is designed to account for reasonable wear and tear. I find paint is assigned a useful life of 4 years and items such as vent covers of 10 years. As the landlord was unable to give a reasonable estimate of the age of the paint and vent covers, I find the landlord has not satisfied the onus of proving the damage was not the result of reasonable wear and tear on the wall and vent covers. Furthermore, I find the move-in report noted damage to the living room walls so I find insufficient evidence that this tenant damaged the living room wall. I dismiss this portion of the landlord's claim.

In respect to the estimate of \$500 for cleaning, I find the carpets were stained at move-in according to the report. I find the tenant's evidence credible that they had to pay \$150 to have them cleaned at move-in. Therefore I find the landlord not entitled to be compensated for steam cleaning the carpets at move-out. I find the move-out report does note the home was not left clean and the photographs in evidence support this report, showing some dirt inside the home and garbage in a shed and storage area. I find the landlord entitled to compensation of \$350 for cleaning and garbage removal (\$500-150).

Liquidated Damage Claim:

Policy Guideline 4 notes: *A liquidated damages clause is a clause in a tenancy agreement where the parties agree in advance the damages payable in the event of a breach of the tenancy agreement. The amount agreed to must be a genuine pre-estimate of the loss at the time the contract is entered into, otherwise the clause may be held to constitute a penalty and as a result will be unenforceable. In considering whether the sum is a penalty or liquidated damages, an arbitrator will consider the circumstances at the time the contract was entered into.*

I find the evidence of the landlord credible that they usually charge a new landlord one half of one month's rent to rent out a unit for them, including all the necessary checks, showings and paperwork. I find the liquidated damages clause in the lease was a genuine pre-estimate of that loss based on renting for a new landlord. However, I find in this case, the weight of the evidence was that the landlord delayed in advertising to re-rent the unit until March 29, 2018 (although they had almost two months notice) which means that a tenant viewing it in early April would be unable to provide the necessary one month's notice to end his current tenancy. By not diligently trying to re-rent the unit as soon as possible, I find the landlord did not sufficiently mitigate his losses as required by section 7 of the Act. I also find the evidence is that there was only one showing, it was conducted by the tenant and it was successful. Therefore, I find the liquidated damages claim does not reflect accurately the losses of the landlord. I find the landlord entitled to half of it or \$750 which I find more accurately reflects the costs incurred for the necessary paperwork, advertising (which was free) and necessary checks or showings.

Regarding the tenant's claim of lack of knowledge of the consequences of breaching a fixed term lease, I find they signed a contract which included the consequences for breaching it. I find the law is also in the public domain and readily obtainable on the internet or public libraries. I find they signed the lease voluntarily and are bound by its terms.

Conclusion:

I find the landlord is entitled to a monetary order as calculated below and to retain the security deposit to offset the amount owing. I find the landlord is also entitled to recover filing fees paid for this application.

Calculation of Monetary Award:

Rental loss	3000.00
Damage allowance	350.00

Liquidated damage allowance	750.00
Filing fee	100.00
Less security deposit of tenant	-1500.00
Total Monetary Order to Landlord	2700.00

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 24, 2018

Residential Tenancy Branch