



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding MAUDE, MACKAY & CO. LTD.
and [tenant name suppressed to protect privacy]

DECISION

Code MNR, MND, MNSD, FF

Introduction

The landlord and the tenant convened this hearing in response to applications.

The landlord's application is seeking orders as follows:

1. For a monetary order for unpaid rent;
2. For a monetary order for money owed and damages;
3. To keep all or part of the security deposit; and
4. To recover the cost of filing the application.

The tenants' application is seeking orders as follows:

1. Return all or part of the security deposit; and
2. To recover the cost of filing the application.

Tenants' application

This matter was set for hearing by telephone conference call at 1:30 P.M on December 3, 2018. The line remained open while the phone system was monitored for 42 minutes and the only participant who called into the hearing during this time was the landlord. Therefore, as the tenants did not attend the hearing by 1:42 P.M, and the landlord appeared and was ready to proceed, I dismiss the tenants' application without leave to reapply.

Landlord's application

The landlord's agents attended the hearing. As the tenants did not attend the hearing, service of the Notice of Dispute Resolution Hearing was considered.

The Residential Tenancy Branch Rules of Procedure states that the respondents must be served with a copy of the Application for Dispute Resolution and Notice of Hearing.

The landlord's agent testified the Application for Dispute Resolution and Notice of Hearing were sent by registered mail on August 24, 2018 and successfully delivered on August 29, 2018.

find that the tenants have been duly served in accordance with the Act.

The landlord's agents appeared gave testimony and was provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

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?

Is the landlord entitled to retain the security deposit in partial satisfaction of the claim?

Background and Evidence

The parties entered into a fixed term tenancy which began on March 1, 2018 and was to expire on February 28, 2019. Rent in the amount of \$3,500.00 was payable on the first of each month. The tenants paid a security deposit of \$1,750.00. The tenancy ended on July 15, 2018. Filed in evidence is a copy of the tenancy agreement.

The landlord claims as follows:

a.	Unpaid rent for June and July 2018	\$ 7,000.00
b.	Loss of rent for half of August 2018	\$ 1,750.00
c.	Liquidated damages	\$ 1,750.00
d.	Damages to rental unit	\$ 836.40
e.	Filing fee	\$ 100.00
	Total claimed	\$11,436.40

Unpaid rent

The landlord's agents testified that the tenant failed to pay rent for June 2018. The agent stated that the tenants were served a notice to end tenancy on June 25, 2018. The agents stated the tenants vacated the premises on July 15, 2018; however, they failed to pay rent for July 2018. The landlord seeks to recover unpaid rent in the amount of \$7,000.00.

Loss of rent

The landlord's agents testified that the tenants were under a fixed term agreement and because of the short notice and the condition the rental unit was left in, they were unable to find a new renter until August 15, 2018. The landlord seeks to recover loss of rent in the amount of \$1,750.00.

Liquidated damages

The landlord's agents testified that as a term of the fixed term agreement was a liquidated damages clause that states that if the tenants breached the fixed term they were responsible to pay the cost of re-renting the rental unit. The landlord seeks to recover liquidated damages in the amount of \$1,750.00.

Damages

The landlord's agents testified that the tenants did not make any attempt to clean the rental unit.

The landlord's agents testified that the carpets were stained and had to be cleaned. The landlord seeks to recover the cost of \$169.05. Filed in evidence is the receipt.

The landlord's agents testified that there was a large amount of garbage left behind which they had to pay for hauling costs. The landlord seeks to recover the cost of hauling garbage in the amount of \$210.00. Filed in evidence is the receipt for hauling.

The landlord's agents testified that the rental unit was not cleaned. The agents stated that the appliance, cupboards, floors, bathroom were left dirty. The agents stated that they spent eight hours cleaning the premises and seek to recover their time at the rate of \$25.00 per hour. The landlord seeks to recover cleaning cost in the amount of \$200.00.

The landlord's agents testified that the tenants failed to return all keys that gave access to the rental premises. The agents stated as a result they had to have the locks changed. The landlord seeks to recover the cost of the locks in the amount of \$239.89. Filed in evidence is the receipt for changing the locks.

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

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.

Unpaid rent

I accept the undisputed evidence of the landlord's agents that the tenants failed to pay rent as required by their tenancy agreement. This is acknowledged in the tenants' written application. I find the tenants breached section 26 of the Act, when they failed to pay rent when due. I find the landlord is entitled to recover unpaid rent for June and July 2018, in the amount of **\$7,000.00**.

Loss of rent

I accept the undisputed evidence of the landlord's agents that the tenants breached the Act, when they vacated the premises earlier than stated in the fixed term tenancy agreement. I find the tenants breached section 45(2) of the Act. I find the landlord is entitled to be in the same position had the tenants not breached the Act. This includes any loss of rent. I find the landlord's made reasonable efforts to re-rent the unit as they were able to find a new renter commencing August 15, 2018. I find the landlord is entitled to recover loss of rent for August 2018, in the amount of **\$1,750.00**.

Liquidated damages

Since, I have found the tenants have breached the fixed term tenancy agreement, I find the landlord is entitled to recover liquidated damages as listed in the tenancy agreement in the amount of **\$1,750.00**.

Damages

I accept the undisputed evidence of the landlord's agent that the tenants did not leave the rental unit reasonably cleaned as required by section 37 of the Act. I find the tenants breached section 37 of Act, when they failed to clean the stained carpets, when they failed to clean the rental unit and when they failed to remove their garbage and when they failed to return all keys that gave access to the rental premise. I find the landlord is entitled to recover the cost of damages in the amount of **\$836.40**

I find that the landlord has established a total monetary claim of **\$11,436.40** comprised of the above described amounts and the \$100.00 fee paid for this application.

I order that the landlord retain the security deposit of **\$1,750.00** in partial satisfaction of the claim and I grant the landlord an order under section 67 of the Act for the balance due of **\$9,686.40**.

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 tenants' application is dismissed without leave to reapply.

The landlord is granted a monetary order and may keep 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: December 05, 2018

Residential Tenancy Branch