



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding R A CHAN INVESTMENTS INC
and [tenant name suppressed to protect privacy]

DECISION

Code MNR, MND, MNSD, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord filed under the Residential Tenancy Act (the “Act”), for a monetary order for unpaid rent, for damages to the unit and for an order to retain the security deposit in partial satisfaction of the claim.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing.

The parties confirmed receipt of all evidence submissions and there were no disputes in relation to review of the evidence submissions

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 agreed that the tenancy began on October 16, 2017. The parties agreed that they entered into a new fixed term tenancy which began on May 1, 2018 and was to expire on October 31, 2018. Rent in the amount of \$1,348.10 was payable on the first of each month. The tenants paid a security deposit of \$625.00 and a pet damage deposit of \$336.35. The tenancy ended on October 4, 2018.

The landlord claims as follows:

a.	Unpaid rent for October 2018, & NSF fee	\$1,388.10
b.	Damages and cleaning	\$ 325.00
c.	Filing fee	\$ 100.00
	Total claimed	\$1,813.10

Unpaid rent

The landlord testified that the tenants did not give sufficient notice to end the tenancy. The landlord stated that they received an email from the tenants on September 29, 2018, that they would be leaving.

The landlord testified that when they went by the rental unit premises on October 4, 2018, the tenants had vacated leaving a letter. The landlord stated that they deposited the tenants rent cheque on October 1, 2018, and it was returned by the bank. The landlord seeks to recover unpaid rent for October 2018, in the amount of \$1,388.10.

The landlord testified that their tenancy agreement allows them collect the sum of \$40.00 for any returned cheque. The landlord seeks to recover the amount of \$40.00.

The tenants testified that they did send an email to the landlord indicated that they had a new accommodation effective November 1, 2018. The tenants stated that on September 29, 2018, they informed the landlord that they had their new accommodation available and on October 4, 2018, and they vacated the premises.

The tenants testified that they had placed a stop payment of the cheque that they had issued for October 2018, rent.

Damages and cleaning

The landlord testified that the tenants caused damage to the drywall as they left a big hole in the wall. The landlord seeks to recover the cost of the repair in the amount of \$250.00. Filed in evidence is a photograph of the hole in the wall.

The landlord testified that the tenants did not leave the rental unit clean as the bathroom was left dirty, there was garbage on the floor and the appliances were left dirty. The landlord seeks to recover the cost of cleaning in the amount of \$75.00.

The tenants testified that they are not responsible for the hole in the drywall. The tenants stated that this was caused by the drywall getting wet when there was a flood in the upper unit which the water flowed down that wall. Filed in evidence is a video.

The landlord argued that they sent their repair person to the unit and they were informed by the tenants that everything was fine. The landlord stated that the tenants did not inform them at all that there were any issues in the rental unit.

The tenants testified that they left the rental unit reasonably clean.

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

How to end a tenancy is defined in Part 4 of the Act.

Tenant's notice (fixed term)

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

(a) is not earlier than one month after the date the landlord 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,

...

In this case, I find the tenants did not comply with the Act as the earliest date they could have legally ended the tenancy was October 31, 2018, as that is the date specified in the tenancy agreement. Further, the tenants were living in the unit when rent was due.

Since the tenants failed to comply with the Act by not given the landlord sufficient notice to end the tenancy. The landlord is entitled to an amount sufficient to put the landlord in the same

position as if the tenants had not breached the Act. This includes compensating the landlord for any loss of rent up to the earliest time that the tenants could have legally ended the tenancy.

Therefore, I find the landlord is entitled to recover unpaid rent for October 2018, in the amount of **\$1,348.10**.

The tenants place a stop payment on their cheque. The landlord seeks to recover the amount of \$40.00 as stated in their tenancy agreement. Under the Residential Tenancy Regulations the maximum amount the landlord can claim is the amount of \$25.00. Since the tenancy agreement is not in compliance with the regulations, I dismiss this portion of the landlord's claim.

Damages and cleaning

How to leave the rental unit at the end of the tenancy is defined in Part 2 of the Act.

Leaving the rental unit at the end of a tenancy

37 (2) When a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.

Normal wear and tear does not constitute damage. Normal wear and tear refers to the natural deterioration of an item due to reasonable use and the aging process. A tenant is responsible for damage they may cause by their actions or neglect including actions of their guests or pets.

I accept that there was damage to the wall; however, I am not satisfied that the damage was caused by the action or neglect of the tenant. I am satisfied that there was a flood in the rental unit, which is shown in the tenant's video. I find it more likely than not that the damage was caused by the flood. Therefore, I dismiss this portion of the landlord's claim.

Further, I am not satisfied that the tenant's left the rental unit dirty. The landlord provided no photographs of the bathroom or any garbage left behind.

While I accept the refrigerator could have been cleaned better; however, this does not support the rental unit was not left reasonably clean. Therefore, I dismiss this portion of the landlord's claim.

I find that the landlord has established a total monetary claim of **\$1,448.10** comprised of the above described amount and the \$100.00 fee paid for this application.

I order that the landlord retain the security deposit of **\$625.00** and a pet damage deposit of \$336.35 in partial satisfaction of the claim and I grant the landlord an order under section 67 of the Act for the balance due of **\$486.75**.

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 landlord is granted a monetary order and may keep the security deposit and pet damage 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: February 15, 2019

Residential Tenancy Branch