



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, 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 loss of rent;
2. For a monetary order for damages to the unit
3. To keep all or part of the security deposit and pet damage deposit (the "Deposit"); and
4. To recover the cost of filing the application.

The tenant's 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.

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.

Preliminary and procedural issues

The landlord stated at the start of the hearing that they were not served with the tenant's application or evidence.

The tenant testified that it was served on the landlord in person when they attend the premises; however, the landlord would not take the documents and they left the document.

In this case, I do not find it prejudicial to the landlord to consider the tenant's application because the landlord has made a claim to retain to security deposit and pet damage deposit. The Act requires me to considered section 38 of the Act, whether or not the tenant has filed an application.

The tenant confirmed receipt of all evidence submissions from the landlord 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 Deposits in partial satisfaction of the claim?

Is the tenant entitled to the return of the Deposits?

Background and Evidence

The parties agreed that the tenancy began on or about December 31, 2016. Rent in the amount of \$1,700.00 was payable on the first of each month. The tenant paid a security and a pet damage deposit of \$1,700.00.

On October 2, 2018 the tenant was served with a notice to end tenancy effective October 12, 2018. On October 18, 2018 the landlord obtained an order of possession. The tenant vacated on or about October 27, 2018.

The landlord claims as follows:

a.	Loss of rent for November 2018	\$1,768.00
b.	1/3 of September and October 2018	\$1,122.00
c.	Carpet and Air Duct Cleaning	\$ 722.29
d.	Ceiling Repair	\$1,890.00
e.	Filing fee	\$ 100.00
	Total claimed	\$5,602.29

Loss of rent for November 2018

The landlord testified that the tenant did not vacate the rental unit by October 12, 2018, as required by the notice to end tenancy. The landlord stated because they had to obtain an order of possession and the tenant did not leave until October 27, 2018, they were unable to rent the premise for the month of November 2018.

The landlord testified that the tenant was served with a notice of rent increase that was effective November 1, 2018. The landlord seeks to recover loss of rent for November 2018, in the amount of \$1,768.00, as that was the amount of rent that was in the notice of rent increase.

The tenant acknowledged that they did not vacate the premises on the effective date of the notice to end tenancy. The tenant stated they moved out on October 28, 2018.

1/3 of September and October 2018

The landlord testified that the tenant breached the tenancy agreement as they exceeded the number of occupants allowed in the rental unit. The landlord stated that they have a video recording of the tenant's girlfriend moving in and an audio recording of the tenant. The landlord stated that they should be entitled to an occupancy rent for this additional person for the two months they were living in the rental unit at the rate of \$561.00 per month for the two month they were residing in the premise for a total amount of \$1,122.00.

The tenant testified that they did not have an additional occupant residing in the rental unit. The tenant stated that they have had multiple friends that stayed from time to time. The tenant stated that they would only stay for a day or two.

The tenant testified that the reason why there was a moving truck at the property was because they had purchased some furniture from their girlfriend.

Carpet and Air Duct Cleaning

The landlord withdrew this portion of their claim.

Ceiling Repair

The landlord testified that the tenant caused damage to the rental unit below them by letting a toilet overflow causing damage to the ceiling. The landlord seeks to recover the estimated amount for the repair in the amount of \$1,890.00.

The tenant testified that they were not home at the time. The tenant stated that one of their occupants flushed the toilet and then went to school and did not notice the toilet was overflowing.

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.

Loss of rent for November 2018

In this case, the tenant breached the Act, when they failed to pay rent. The tenant further breached the Act when they failed to vacate the property by October 12, 2018 as stated in the notice to end tenancy. The landlord was required to obtain an order of possession of the rental unit and the tenant vacated on or about October 27, 2018.

Since the tenant failed to comply with the Act the landlord is entitled to an amount sufficient to put the landlord in the same position as if the tenant had not breached the

Act. This includes compensating the landlord for any loss of rent up to the earliest time that the tenant could have legally ended the tenancy.

As the tenant did not vacate the premises until October 27, 2018, I find the earliest the tenant could have legally ended the tenancy was November 30, 2018. Therefore, I find the landlord is entitled to recover loss of rent for November 2018, in the amount of **\$1,768.00**.

1/3 of September and October 2018

I accept the landlord's version over the tenants that they had moved an unauthorized occupant in the premises. This is support by an audio recording. I do not accept the tenant's version that they simply had purchased their girlfriends furniture. I find the tenant has breached the tenancy agreement and the Act.

While I have found the tenant breached the Act, there is no clause in the agreement that indicates that the landlord is entitled to additional occupancy rent of the amount claimed. I find the only option the landlord had was to end the tenancy for cause for breach of a material term of the tenancy agreement. Therefore, I dismiss this portion of the landlord's claim.

Ceiling Repair

I accept the evidence of both parties that an occupant in the tenant's unit flushed the toilet and it overflowed causing damage to the lower unit. I find the occupants actions neglectful as they should have been aware the toilet was overflowing at the time they flushed the toilet. However, the occupant left the premises allowing the toilet to cause damage to the lower unit.

I find the tenant is responsible for the action of all occupants and any guest that they may have in the rental unit. I find the tenant breached the Act, when they failed to repair the damage that was caused by their neglect. Therefore, I find the landlord is entitled to recover the estimate cost of the repair in the amount of **\$1,890.00**.

I find that the landlord has established a total monetary claim of **\$3,758.00** comprised of the above described amounts and the \$100.00 fee paid for this application.

In this case, the landlord filed their application prior to the tenancy ending. I find the landlord has not breached section 38 of the Act and the tenant is not entitled to double of their Deposits. Therefore, I dismiss the tenant's application.

I order that the landlord retain the Deposits of **\$1,700.00** in partial satisfaction of the claim and I grant the landlord an order under section 67 of the Act for the balance due of **\$2,058.00**.

This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court. The **tenant is cautioned** that costs of such enforcement are recoverable from the tenant.

Conclusion

The landlord is granted a monetary order and may keep the Deposits in partial satisfaction of the claim and the landlord is granted a formal order for the balance due.

The tenant's application is dismissed.

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 25, 2019

Residential Tenancy Branch