



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

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 loss of rent, for damages to the unit, for an order to retain the security deposit in partial satisfaction of the claim and to recover the filing fee.

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 loss of 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 they entered into a fixed term tenancy which began on May 1, 2018 and was to expire on April 30, 2019. Rent in the amount of \$1,100.00 was payable on the first of each month. The tenants paid a security deposit of \$500.00 and a pet damage deposit of \$500.00 (the “Deposits”). The tenancy ended on June 30, 2018.

The landlord claims as follows:

a.	Loss of rent for July 2018	\$1,100.00
b.	Cleaning costs	\$ 120.00
c.	Filing fee	\$ 100.00
	Total claimed	\$1,320.00

The landlord testified that the tenants gave notice on June 23, 2018, that they were ending the fixed term tenancy on June 30, 2018. The landlord stated that due to short notice that they were unable to find a new renter for the month of July 2018. The landlord stated that they advertised the unit and found a new renter for August 1, 2018. The landlord seeks to recover loss of rent for July 2018, in the amount of \$1,100.00.

The tenant testified that they ended the tenancy because they feel the landlord breached a material term of that agreement, by failing to provide quiet enjoyment. The tenant stated that the noise started shortly after they moved in. The tenant confirmed they did not give the landlord prior notice in writing that they believed there was a breach of a material term of the tenancy agreement. The tenant stated that is was attached to the notice to end tenancy.

The parties agreed a move-in condition inspection was completed. The landlord testified that the tenants did not participate in the move-out inspection that was scheduled for July 1, 2018. The landlord stated the tenant were in the rental unit; however, would not participate and they left prior to the inspection being completed.

The landlord testified that the tenants did not properly clean out the cupboards as their personal items were found in the drawers when they were conducting the move-out inspection and the bathroom was not clean. Filed in evidence is a receipt for cleaning.

The tenant testified that they were at the rental unit on July 1, 2018. The tenant stated that they did not participate in the move-out inspection. The tenant stated that the landlord was passive aggressive as they found some glad wrap in a draw and stated that the rental unit had not been cleaned. The tenant stated that they felt abused and stated why should I be treated like this and they decided to leave, without participating in the move-out condition inspection report.

The tenant testified that they believe the rental unit was left 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.

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, the tenants entered into a one year fixed term tenancy agreement that was to expire on April 30, 2019. While the tenants may have not like the level of noise, I find it more likely than not normal household noise.

Further, the tenants did not provide the landlord with written notice that they would be ending the tenancy for breach of a material term, should the breach not be rectified within a reasonable time. The tenant's gave notice on June 23, 2018, to end the tenancy on June 30, 2018.

I find the tenants' breached the Act when they gave notice to end tenancy prior to the date specified in the tenancy agreement. I find that due to short notice that the landlord did not have reasonable time to find a new renter for July 2018. Therefore, I find the landlord is entitled to recover loss of rent for July 2018, in the amount of **\$1,100.00**.

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.

I accept that the tenants did not leave the rental unit reasonable clean and there were deficient that had to be completed. This is support by the cleaner's evidence submitted as evidence. Further, the tenants did not participate in the end of the tenancy inspection, which was completed by the landlord. I find the tenants have failed to provide a preponderance amount of evidence to the contrary. Therefore, I find the landlord is entitled to recover the cost of cleaning in the amount of **\$120.00**.

Return of security deposit and pet damage deposit

38 (1) Except as provided in subsection (3) or (4) (a), within 15 days after the later of

- (a) the date the tenancy ends, and
- (b) the date the landlord receives the tenant's forwarding address in writing,

the landlord must do one of the following:

- (c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;
- (d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

(2) Subsection (1) does not apply if the tenant's right to the return of a security deposit or a pet damage deposit has been extinguished under section 24 (1) [tenant fails to participate in start of tenancy inspection] or 36 (1) [tenant fails to participate in end of tenancy inspection].

I accept the evidence of both parties that the tenants failed to participate in the end of tenancy inspection. I find the tenants have extinguished the right to the return of the security. However, I find it appropriate to offset the tenants' security against the landlord's monetary claim as it would be an unjust enrichment, if not offset.

I find that the landlord has established a total monetary claim of **\$1,320.00** comprised of the above described amounts and the \$100.00 fee paid for this application.

I order that the landlord retain the Deposits of **\$1,000.00** in partial satisfaction of the claim and I grant the landlord an order under section 67 of the Act for the balance due of **\$320.00**.

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.

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: April 11, 2019

Residential Tenancy Branch