



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MND, MNR, MNSD, FFL

Introduction

On December 19, 2018, the Landlords submitted an Application for Dispute Resolution under the *Residential Tenancy Act* (“the Act”) seeking money owed or compensation for damage or loss; a monetary order for unpaid rent; a monetary order for damage or repairs; and to keep the security deposit. On January 15, 2019, the Landlords amended their application to increase the monetary claim amount.

The matter was set for a conference call hearing. The Landlords attended the teleconference hearing; however, the Tenants did not. The Landlords provided affirmed testimony that the Notice of Dispute Resolution Proceeding documents were sent to the Tenants on December 22, 2018, using registered mail. The Landlords provided a copy of the registered mail receipt labels and tracking confirmation numbers. I find that the Tenants were served with the Notice of Dispute Resolution Proceeding in accordance with sections 89 and 90 of the Act. The Tenants were notified of the hearing and failed to attend.

The hearing process was explained. The Landlords were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to present affirmed oral testimony and to make submissions during the hearing.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

- Are the Landlords entitled to a monetary order to recover unpaid rent?
- Are the Landlords entitled to a monetary order for damage or repair costs?

- Are the Landlords entitled to other compensation for damage or loss?
- Can the Landlords keep the security deposit towards their claims?
- Are the Landlords entitled to recover the cost of the filing fee?

Background and Evidence

The Landlords testified that the tenancy began on July 9, 2018, as a one year fixed term tenancy to continue until July 8, 2019. Rent in the amount of \$3,350.00 was to be paid to the Landlords by the first day of each month. The Tenants paid the Landlord a security deposit of \$1,675.00. The Landlords testified that the Tenants moved out of the rental unit on December 8, 2018. The Landlords provided a copy of the tenancy agreement and a three page addendum.

The Landlords are seeking compensation as follows:

Loss of Rent	\$2,456.67
Agents Fees	\$2,357.25
Security Deposit Breach Fee	\$1,675.00
Carpet Shampooing	\$235.20

Loss of Rent \$2,456.67

The Landlord testified that the Tenants broke the fixed term tenancy agreement by moving out of the rental unit on December 8, 2018, prior to the end of the fixed term agreement. The Landlords provided a copy of the written notice they received from the Tenants dated October 23, 2018.

The Landlord testified that they were unable to find a new Tenant for the rental unit for remainder of December 2018. The Landlord found a new Tenant for the month of January 2019. The Landlords are seeking \$2,456.67 for the loss of December 2018 rent.

Security Deposit Breach Fee \$1,675.00

The Landlord submitted that the tenancy agreement addendum provides that the security deposit will be refundable to the Tenant only at the end and completion of the tenancy. The Landlord submitted that since the Tenant moved out prior to the end of the fixed term tenancy, the Landlord wants to keep the security deposit.

Agents Fees \$2,357.25

The Landlord testified that they began looking for a replacement Tenant by advertising the unit on local websites. The Landlord testified that they also paid an agent the amount of \$2,357.25 to find a replacement Tenant. The Landlord provided a document and receipt for the cost of listing the rental unit with an agent.

Carpet Cleaning Costs \$235.20

The Landlords testified that the Tenants failed to clean the carpets at the end of the tenancy. The Landlord testified that the tenancy agreement requires the Tenant to have the carpet cleaned at the end of the tenancy. The Landlord had the carpet cleaned and has provided a copy of a receipt dated December 22, 2018, in the amount of \$235.20.

Analysis

Based on the evidence before me, the testimony of the Landlords, and on a balance of probabilities, I make the following findings:

Loss of Rent \$2,456.67

I find that the Tenants ended the tenancy on December 8, 2018 prior to the end of the fixed term agreement and are therefore legally responsible to pay the rent until the Landlord found a replacement Tenant. I accept the Landlords evidence that the Landlord made an effort to find a new Tenant by advertising the unit on local websites. I find that the Landlord suffered a loss of rent for the remainder of the month of December 2018, in the amount of \$2,456.67.

I grant the Landlord the amount of \$2,456.67.

Security Deposit Breach Fee \$1,675.00

I find that the Landlord is not entitled to keep the security deposit of \$1,675.00 based on the Tenants failure to fulfill or complete the full term of the fixed term tenancy agreement.

Under section 38 of the Act, a Landlord may only keep a security deposit if the Tenant agrees in writing that the Landlord may retain the amount to pay a liability or obligation of the Tenant or when a Landlord has applied for dispute resolution claiming against the deposit and the director orders that the Landlord may retain the amount.

I find that the security deposit of \$1,675.00 that is being held by the Landlord will apply towards setting off any monetary awards granted to the Landlord.

Agents Fees

The Landlords claim to recover the amount of \$2,357.25 is dismissed. The Landlord chose to hire an agent to manage the property. The tenancy agreement does not contain a liquidated damages clause identifying an amount that the Landlord can claim for the costs of re-renting the unit if the Tenant ends the tenancy early. In addition, the tenancy agreement does not contain any term where the parties agreed that the Tenants would pay for the Landlords cost to hire a property manager.

I find that the Landlords' decision to hire an agent or property manager is a cost of doing business as a Landlord and is not a cost that is recoverable against the Tenants.

Carpet Cleaning Costs

I accept the Landlords testimony and evidence that the carpet was not cleaned at the end of the tenancy and the Landlords had the carpet professionally cleaned.

I grant the Landlords the amount of \$235.20.

Section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. I order the Tenants to repay the \$100.00 fee that the Landlords paid to make application for dispute resolution.

I find that the Landlords have established a total monetary claim of \$2791.87 comprised of \$2456.67 for a loss of rent; \$235.20 for carpet cleaning; and the \$100.00 fee paid by the Landlords for this hearing. After setting off the security deposit of \$1675.00 towards the award of \$2,791.87, I find that the Landlord is entitled to a monetary order in the amount of \$1,116.87. This monetary 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 ended the fixed term tenancy early. The Tenants are responsible to pay for the Landlords loss of December 2018 rent and the cost of carpet cleaning.

The Landlords have established a monetary claim in the amount of \$2,791.87. I order that the Landlords can keep the security deposit in the amount of \$1,675.00 in partial satisfaction of the Landlord's awards.

I grant the Landlord a monetary order in the amount of \$1,116.87.

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: May 1, 2019

Residential Tenancy Branch