



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MND, MNSD, FF

Introduction

The landlords and the tenants convened this hearing in response to applications.

The landlords' application is seeking orders as follows:

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

The tenants' application is seeking orders as follows:

1. Return of double the security deposit and pet damage 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 matter

In this tenancy the parties were at a previous hearing, and the tenants were granted one month compensation pursuant to section 51 of the Act, and other monetary relief. I have noted the file number on the covering page of this decision.

Issues to be Decided

Are the landlords entitled to a monetary order for unpaid rent?

Are the landlords entitled to monetary compensation for damages?

Are the landlords entitled to retain the security deposit in partial satisfaction of the claim?

Are the tenants entitled to the return of double the security deposit and pet damage deposit?

Background and Evidence

The parties agreed that the tenancy began on March 15, 2019. Rent in the amount of \$1,300.00 was payable on the 15th of each month. The tenants paid a security deposit of \$650.00 and a pet damage deposit of \$250.00. The tenancy ended on May 18, 2019.

The landlords claim as follows:

a.	Unpaid rent for May 1 to May 18, 2019	\$ 754.83
b.	Damages to the unit	\$ 481.93
c.	Filing fee	\$ 100.00
	Total claimed	\$1,336.76

Unpaid rent for May 1 to May 18, 2019

The landlords testified that the tenants did not pay all rent as they only paid a portion of rent up to April 30, 2019, and they were in the rental unit until May 18, 2019. The landlords seek to recover prorated rent in the amount of \$754.83.

The tenants testified that they did not pay rent from May 1 to May 18, 2019 as that was compensation for receiving a Two Month Notice to End Tenancy for Landlord's Use of Property. The tenants acknowledged that they received compensation in the amount of \$1,300.00, from the previous hearing which has been paid by the landlords.

Damages to the unit

The landlords testified that the tenants cause damage to the refrigerator shelves. The landlords stated one shelf cost the amount of \$120.91 and the other two shelves cost \$50.51 each.

The landlords testified that the tenants left garbage behind, such as a couch, cabinet and recycling. The landlords stated that they had to pay the amount of \$50.00 to have the items removed.

The landlords testified that the tenants were smoking cigarettes and marijuana in the rental unit and they had to paint the unit. The landlords stated the cost of the painting is estimated to cost \$210.00.

The landlords testified that the tenants caused water damage to the floor; however, they do not know the cost of repair.

The tenants testified that they did not cause any damage to the refrigerator shelves. The tenants stated that the crisper was broken when they moved in to the rental unit.

The tenants testified that they did leave items on the boulevard as they had arranged with the municipality to remove those items. The tenants stated that it would cost more to dispose of the couch than what the landlords said they paid only \$50.00.

The tenants testified that they did not smoke in the rental unit.

The tenants testified that they did not cause damage to the floor. The tenants stated there was one piece of flooring that was getting worse during the tenancy.

Tenants' application

The tenants submit in their application that they are entitled to double the security deposit and pet damage deposit, in the amount of \$1,800.00.

The landlords submit in their application that their application claiming against the security deposit and pet damage deposit was made within 15 days of the tenancy ending.

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, both parties have the burden of proof to prove their respective claim.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

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 for May 1 to May 18, 2019

Rules about payment and non-payment of rent are defined in Part 2 of the Act.

Rules about payment and non-payment of rent

26 (1) *A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.*

The evidence of both parties was that the tenants did not pay rent from May 1 to May 18, 2019.

In this case, the tenants' were at a previous hearing and received compensation equal to one month's rent; however, the tenants had not paid rent. I find they only way the tenants received the full compensation under a previous order was that they failed to provide the Arbitrator with relevant evidence, that all rent was not paid.

The tenants are not entitled to withhold rent (\$754.83) and receive the full compensation (\$1,300.00) under section 51 of the Act, as that equals to an amount greater than they were entitled to receive.

I find the tenants did not pay rent for May 1 to May 18, 2019. Therefore, I find the landlords are entitled to recover unpaid rent in the amount of **\$754.83**.

Damages

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.

In this case, the evidence of the landlords was that the tenants caused damage to the refrigerator shelves, the flooring and the walls by smoking. This was denied by the tenants. As both parties have provided a different version of events and the onus is on the landlords to prove their version. I find without further evidence such as a move-in condition inspection report that they have failed to prove that the damage was caused by the tenants. Therefore, I dismiss this portion of the landlords' claim.

I am satisfied that the tenants left furniture items behind as this was admitted by the tenants. While I accept that the tenants may have arranged for the items to be picked up and they were left on the boulevard that should have been done prior to the tenancy ending. The landlords had the right to remove and dispose of those items after the tenants vacated the property. Therefore, I find the landlords are entitled to recover for furniture removal the amount of **\$50.00**.

I find that the landlords have established a total monetary claim of **\$904.83** comprised of the above described amounts and the \$100.00 fee paid for this application.

I order that the landlords retain the security deposit of **\$650.00** and pet damage deposit of **\$250.00** in partial satisfaction of the claim and I grant the landlords an order under section 67 of the Act for the balance due of **\$4.83**.

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 tenant.

Tenants' application

In this case, the landlords filed their application claiming against the security deposit and pet damage deposit within 15 days of the tenancy ending. I find the tenants are not entitled to double the security deposit or pet damage deposit. Therefore, I dismiss their claim for double.

As the tenants were not successful with their claim, I decline to award the cost of the filing fee.

Conclusion

The landlords are granted a monetary order and may keep the security deposit and pet damage deposit in partial satisfaction of the claim and the landlords are 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: September 12, 2019

Residential Tenancy Branch