



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MND, MNDC, MNSD, FFL

Introduction

On June 9, 2019, 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.

The matter was set for a conference call hearing. The Landlords attended the teleconference hearing; however, the Tenant did not. The Landlords provided affirmed testimony that they served the Notice of Dispute Resolution Proceeding to the Tenant using registered mail sent on June 23, 2019. The Landlord testified that they sent the mail to an address provided to them by the Tenant after the tenancy had ended. Based on the Landlords affirmed testimony, I find that the Tenant was served with notice of the hearing in accordance with sections 89 and 90 of the Act.

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?
- Are the Landlords entitled to money owed or 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 June 1, 2018, as a one year fixed term tenancy to continue until June 1, 2019. Rent in the amount of \$1,260.00 was to be paid by the first day of each month. The Tenant paid the Landlord a security deposit of \$630.00. The Landlord testified that the Tenant moved out of the rental unit on June 1, 2019.

The Landlord provided a copy of the tenancy agreement.

The Landlords are seeking compensation as follows:

Loss of Rent for April 2019, and May 2019.	\$2,520.00
Damage	\$450.00
Money Owed or Compensation for Damage or Loss	\$10,593.25

Loss of Rent \$2,520.00

The Landlords testified that the Tenant failed to pay the rent owing under the tenancy agreement for the months of April 2019 and May 2019.

The Landlord is seeking a monetary order in the amount of \$2,520.00.

Damage

The Landlord testified that the Tenant had an unauthorized pet in the rental unit. The Landlord testified that the rental unit was left unclean at the end of the tenancy. The Landlord testified that there was faeces and cat odor throughout the unit. The Landlord testified that he hired a cleaner to clean the rental unit at a cost of \$300.00.

The Landlord testified that he hired a person to dispose of garbage that was left by the Tenant at the rental unit. The Landlord testified that it took three hours at \$35.00 per hour and \$20.00 for the ferry cost and \$20.00 for dump fees to dispose of the garbage. The Landlord is seeking \$145.00.

Money Owed or Compensation for Damage or Loss

The Landlord is seeking \$9,600.00 for a loss of rental income and \$991.00 for the cost of having to stay at an Air Bed and Breakfast.

The Landlord testified that the rental property contains two rental units. The Tenant rented the top two floors of the home and the lower unit is a self-contained unit which was not part of her tenancy.

The Landlord testified that they asked the Tenant why she was not renting out the lower rental unit. The Landlord testified that they provided her with three names for prospective Tenants, so she could meet them and feel comfortable with them. The Landlords were asked if the Tenant was acting as their agent with respect to renting out the lower unit and they replied "no".

The Landlords testified that in July 2018 they arrived at the rental property with the intention to stay in the lower rental unit; however, the Tenant had locked the doors and would not permit access to them. The Landlord testified that the Tenant took the position that the tenancy agreement was for use of the entire home. The Landlord testified that a verbal conversation with the tenant was that she only had use of the top two floors. The Landlords testified that they had to find alternate accommodation and rented an air bed and breakfast at a cost of \$991.00 for ten nights.

The Landlords testified that the lower rental unit is a one bedroom 800 square foot unit that was created in 2008 and was previously rented out for \$800.00 each month as late as 2017. The Landlord is seeking \$9,600.00 which is \$800.00 per month for the period of June 2018 to May 2019.

The Landlords were questioned why they are including a loss of rent for June 2018 and July 2018 and they testified that they had reached an agreement with the Tenant prior to June 1, 2018, that the Landlords would rent out the lower unit as an Air BnB and the Landlord and Tenant would split the rental fee. The Landlord testified that the Tenant would take care of the day to day maintenance of the rental unit.

The Landlords testified that after sending letters to the Tenant they issued a notice to end tenancy to the Tenant in October 2018. At the hearing on December 21, 2018 the Arbitrator dismissed the tenant's application to cancel the notice to end tenancy. The Landlords testified that they issued a 2 month notice to end tenancy on February 23, 2019, and they were granted an order of possession of the rental property on May 10, 2019.

When the Landlords were asked why they did not apply for an order of possession sooner, they replied that they thought the Tenant would be leaving after the December 21, 2018 hearing.

Security Deposit

The Landlords have applied to keep the security deposit of \$630.00 in partial satisfaction of their claim for unpaid rent.

Analysis

When a party makes a claim for damage or loss, the burden of proof lies with the applicant to establish the claim. To prove the claim, the Applicant must satisfy the following four elements on a balance of probabilities:

1. Proof that the damage or loss exists;
2. Proof that the damage or loss occurred due to the actions or neglect of the Respondent in violation of the Act, Regulation, or tenancy agreement;
3. Proof of the actual amount required to compensate for the claimed loss; and,
4. Proof that the applicant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

Section 7 of the Act provides,

if a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results. A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

Residential Tenancy Branch Policy Guideline # 16 provides the following with respect to types of damages that may be awarded to parties:

An arbitrator may award monetary compensation only as permitted by the Act or the common law. In situations where there has been damage or loss with respect to property, money or services, the value of the damage or loss is established by the evidence provided.

The Residential Tenancy Branch Policy Guideline #3 Claims for Rent and Damages for Loss of Rent provides:

The damages awarded are an amount sufficient to put the landlord in the same position as if the tenant had not breached the agreement. As a general rule this includes compensating the landlord for any loss of rent up to the earliest time that the tenant could legally have ended the tenancy.

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

Unpaid Rent

I have reviewed the tenancy agreement which is consistent with the Landlords affirmed testimony that the Tenant was required to pay rent each month in the amount of \$1,260.00. I find that that the tenant failed to pay the rent owing under the tenancy agreement for the months of April 2019 and May 2019.

I award the Landlord the amount of \$2,520.00 for unpaid rent.

Security Deposit

I order that the Landlords can keep the security deposit of \$630.00 in partial satisfaction of their claim for unpaid rent.

Damage

The Landlord failed to provide any photographs or documentary evidence, such as a condition inspection, showing that the rental unit was left dirty and required cleaning. In addition, there are no receipts provided for the cost of having the unit cleaned or for the cost for removing, dumping or disposing of the Tenant's garbage.

The Landlord failed to provide sufficient evidence on a balance of probabilities to prove that the damage existed, and the Landlord failed to provide proof of the actual amount required to compensate for the claimed loss.

The Landlords' claim for compensation due to damage is not successful and is dismissed without leave to reapply.

Money Owed or Compensation for Damage or Loss

I have reviewed the tenancy agreement provided by the Landlords. I find that the agreement does not identify that the Tenant is only renting the upper unit of the rental property. The tenancy agreement does not identify that there are two separate units at the dispute address.

With respect to mitigation against the loss of rental income, I find it odd that the Landlord did not apply for an order of possession based on the allegation that the Tenant breached the tenancy agreement by occupying the entire rental home. Instead the Landlord issued a Two Month Notice to end Tenancy for Landlord's Use of Property on February 23, 2019. The Landlord was aware of the alleged breach in July 2018, but did not effectively take steps to deal with the issue until the end of October; and then did not pursue their right for an order of possession, and issued a different type of notice to end tenancy at the end of February 2019.

Based on the testimony of the Landlords, I find that the Landlord and Tenant reached an agreement that is a contract outside the jurisdiction of the Act. The Act does not apply to living accommodation occupied as vacation or travel accommodation. I do not accept the Landlords' position that they are entitled to a loss of rent in the amount of \$800.00 each month. Any rental income through Air BnB was dependent on nightly rentals and there is no proof of the value of the actual loss that the Landlords suffered.

Regardless of any loss of rental income, I find that I do not have jurisdiction to deal with a breach of an agreement between the parties where they agreed that the lower suite would be rented out as an Air BnB and the parties would split the rental fee. I find it odd that the Landlord would seek agreement from the Tenant to rent the lower suite and split any rental income, if the Tenant was not entitled to occupy the lower unit of the rental home. Based on the evidence before me, I am not satisfied that the Tenant breached the tenancy agreement by occupying the entire rental home.

The Landlords' claim for a monetary order for a loss of rental income and to recover the cost of staying at an Air BnB is dismissed without leave to reapply.

Section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. Since the Landlord was successful with the claim for unpaid rent and damage, I order the Tenant to repay the \$100.00 fee that the Landlords paid to make application for dispute resolution.

I find that the Landlord has established a total monetary claim of \$2,620.00 comprised of unpaid rent, and the \$100.00 fee paid by the Landlords for this hearing. After setting off the security deposit of \$630.00 towards the award of \$2,620.00, I find that the Landlords are entitled to a monetary order in the amount of \$1,990.00. This monetary 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 has established a monetary claim for unpaid rent and the cost of the filing fee in the amount of \$2,620.00. I order that the Landlord can keep the security deposit in the amount of \$630.00 in partial satisfaction of the Landlords' claim.

I grant the Landlord a monetary order in the amount of \$1,990.00.

The Landlords claim for a loss of rental income; accommodation costs; and damage costs were not successful and are dismissed without leave to reapply.

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: October 2, 2019

Residential Tenancy Branch