



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MND, MNDC, MNSD, FF

Introduction

On June 13, 2019, the Landlord 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 Landlord attended the teleconference hearing; however, the Tenants did not.

The Landlord testified that she served the Tenants with the Notice of Dispute Resolution Proceeding documents using registered mail sent to the Tenants on June 21, 2019. The Landlord testified that the registered mail was signed for by Mr. J.B on June 24, 2019. I find that the Notice of Dispute Resolution Proceeding was served to the Tenants in accordance with sections 89 and 90 of the Act. The hearing proceeded.

The Landlord was 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.

Preliminary and Procedural Matters

Section 59 of the Act provides that an application for dispute resolution must include full particulars of the dispute that is to be the subject of the dispute resolution proceedings.

The claim is limited to what is stated in the application and Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

The Landlord uploaded approximately 200 digital photographs prior to the hearing. The majority of the digital file names do not identify the contents of the photographs.

Residential Tenancy Branch Rules of Procedure were created with the objective to ensure a fair, efficient and consistent process for resolving disputes for Landlords and Tenants.

Rule 2.5 provides that to the extent possible, the applicant should submit the following documents at the same time as the application is submitted:

- a detailed calculation of any monetary claim being made

Rule 3.7 provides that all documents to be relied on as evidence must be clear and legible. To ensure a fair, efficient and effective process, identical documents and photographs, identified in the same manner, must be served on each respondent and uploaded to the Online Application for Dispute Resolution or submitted to the Residential Tenancy Branch directly or through a Service BC Office. For example, photographs must be described in the same way, in the same order, such as: "Living room photo 1 and Living room photo 2". To ensure fairness and efficiency, the arbitrator has the discretion to not consider evidence if the arbitrator determines it is not readily identifiable, organized, clear and legible.

Rule 3.10.1 Description and labelling of digital evidence provides the following information: A party submitting digital evidence must:

- include with the digital evidence:
 - a description of the evidence;
 - identification of photographs, such as a logical number system and description;
 - a description of the contents of each digital file; a time code for the key point in each audio or video recording; and
 - a statement as to the significance of each digital file;

I find that the applicant's digital photographic evidence is not clearly organized and identifiable. The majority of the Landlord's photographs are not identified by use of a digital evidence details document. In addition, the Landlord did not provide the full details of the claim by providing a monetary order worksheet which breaks down the specific claim amount of each item.

In consideration of the above, I find that the Landlord's claim for damage is not directly connected to the Landlord's claim regarding a loss of rent; therefore, I am dismissing the Landlord's claim for damage with leave to reapply.

The hearing proceeded based on the Landlord's claim for a monetary order for unpaid rent; loss of future rent; and to keep the security deposit in partial satisfaction of the claim for rent.

Issues to be Decided

- Is the Landlord entitled to a monetary order to recover unpaid rent?
- Is the Landlord entitled to money owed or compensation for damage or loss?
- Can the Landlord keep the security deposit and pet damage deposit towards the claim for unpaid rent?

Background and Evidence

The Landlord testified that the tenancy began on November 1, 2018, as a one year fixed term agreement to continue until October 31, 2019. Rent in the amount of \$1,500.00 was to be paid by the first day of each month. The Tenants paid the Landlord a security deposit of \$875.00 and a pet damage deposit of \$875.00.

The Landlord provided a copy of the tenancy agreement. Utility costs are not included in the rent.

Unpaid Rent

The Landlord testified that the Tenants breached the fixed term tenancy agreement by moving out of the rental unit on June 6, 2019, prior to the end of the fixed term agreement.

The Landlord testified that the Tenants did not pay the rent due under the tenancy agreement for the months of May 2019, and June 2019. The Landlord also testified that the Tenants did not pay the utilities in the amount of \$794.17. The Landlord provided copies of utility bills for billing cycles up to April 2019 and June 21, 2019. The Landlord is seeking a monetary order in the amount of \$3,794.17.

Loss of Rent \$6,000.00

The Landlord testified that she has suffered a loss of rent for the four months from July 2019 until October 2019. The Landlord testified that she placed an advertisement for the rental unit in the local newspaper and on websites. The Landlord testified that there was a flood of rentals available in town because the local sawmill had just closed down. The Landlord testified that she first began advertising the rental unit for \$1,500.00 per month in May 2019. The Landlord provided a copy of her advertisements from the newspaper.

The Landlord testified that she received income from the rental unit in the month of August 2019. She testified that she rented the home out as an Air BnB and received \$775.25. The Landlord testified that she received \$1,961.35 from Air BnB in September. The Landlord testified that she received no rental income for the month of October 2019.

Security Deposit and Pet Damage Deposit

The Landlord is requesting to keep the security deposit of \$875.00 and the pet damage deposit of \$875.00 towards her claims for unpaid rent.

Analysis

The Residential Tenancy Branch Policy Guideline #30 Fixed Term Tenancies provides that:

During the fixed term neither the landlord nor the tenant may end the tenancy except for cause or by agreement of both parties.

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. This may include compensating the landlord for the difference between what he would have received from the defaulting tenant and what he was able to re-rent the premises for the balance of the un-expired term of the tenancy.

In all cases the landlord's claim is subject to the statutory duty to mitigate the loss by re-renting the premises at a reasonably economic rent.

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.

Based on the evidence before me, the testimony of the Landlord, and on a balance of probabilities,

Unpaid Rent

I have reviewed the tenancy agreement and I find that the Tenants entered into a one year fixed term tenancy to continue until October 31, 2019. I find that the tenancy agreement requires the Tenants to pay rent in the amount of \$1,500.00 each month.

I accept the Landlords testimony that the Tenants failed to pay the rent owing under the tenancy agreement for the months of May 2019, and June 2019. I award the Landlord the amount of \$3,000.00 for unpaid rent.

I find that utility costs were not included in the rent and I find that the Tenants are responsible to pay utility costs. I accept the Landlord's evidence that the Tenants failed to pay utility bills in the amount of \$754.65. I award the Landlord the amount of \$754.65.

Loss of Rent

I find that the Tenants moved out of the rental unit prior to the end of the fixed term tenancy. I find that the Tenants are responsible to pay the rent until the end of the tenancy agreement or until Landlord was able to find a new tenant. I accept the Landlord testimony that she mitigated against the loss by advertising the rental unit in the newspaper and online.

I find that the Tenants are responsible to compensate the Landlord for the loss of rent for the months of July 2019, August 2019, September 2019, and September 2019. I find that the Landlord was able to lessen this loss of rent with short term Air BnB rentals. The Landlord received income of \$2,736.60. The rental income the Landlord received will be deducted from the \$6,000.00 that the Tenants are responsible for paying. I find that the Tenants owe the Landlord the balance of \$3,263.40.

Security Deposit and Pet Damage Deposit

I authorize the Landlord to keep the security deposit of \$875.00 and the pet damage deposit of \$875.00 towards her claims for unpaid rent.

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 Landlord paid to make application for dispute resolution.

I find that the Landlord has established a total monetary claim of \$7,118.05 comprised of unpaid rent and utilities, and the \$100.00 fee paid by the Landlord for this hearing. After setting off the security deposit of \$1,750.00 towards the award of \$7,118.05, I find that the Landlord is entitled to a monetary order in the amount of \$5,368.05. 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 Landlord has established a monetary claim in the amount of \$7,118.05.00. I order that the Landlord can keep the security deposit and pet damage deposit in the amount of \$1,750.00 in partial satisfaction of the Landlord's claim for unpaid rent.

I grant the Landlord a monetary order for the balance of \$5,368.05.

The Landlord has leave to reapply for her claim for damage to the rental unit.

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 10, 2019

Residential Tenancy Branch