



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 August 15, 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 and or pet damage deposit.

The matter was set for a conference call hearing. The Landlord attended the hearing; however, the Tenants did not. The Landlord testified that he served the Notice of Dispute Resolution Proceeding to the Tenants using registered mail sent on August 27, 2019. The Landlord provided a copy of the registered mail receipt and tracking number. The Landlord testified that he sent the mail to the Tenants’ forwarding address. Based on the testimony and evidence of the Landlord, I find that the Tenants were served with notice of the hearing in accordance with sections 89 and 90 of the Act.

The Landlord was provided with an opportunity to ask questions about the hearing process. He 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.

Issues to be Decided

- Is the Landlord entitled to a monetary order to recover unpaid rent?
- Is the Landlord entitled to a monetary order for damage or repair costs?
- Is the Landlord entitled to money owed or other compensation for damage or loss?
- Can the Landlord keep the security deposit towards their claims?

Background and Evidence

The Landlord testified that the tenancy began on January 1, 2019, as a fixed term tenancy to continue until December 31, 2019. Rent in the amount of \$2,500.00 was to be paid to the Landlord by the first day of each month. The Tenants paid the Landlord a security deposit of \$1,250.00.

The Landlord testified that the Tenants moved out of the rental unit on August 21, 2019 prior to the end of the fixed term tenancy.

The Landlord is seeking compensation as follows:

Loss of Rent for August 2019 and September 2019	\$5,000.00
Unpaid Hydro Bill	\$200.00
Damage	\$1,000.00

Loss of Rent \$5,000.00

The Landlord testified that the Tenants moved out of the rental unit on August 21 without paying the rent of \$2,500.00 owing under the tenancy agreement for August 2019. The Landlord testified that the Tenants breached the fixed term tenancy agreement by vacating the rental unit prior to the end of the contract.

The Landlord testified that he started advertising the rental unit in August 2019 by placing advertisements on local websites. The Landlord testified that he was able to re-rent the unit for October 1, 2019. The Landlord testified that he also suffered a loss of rent for the month of September 2019 in the amount of \$2,500.00.

The Landlord is seeking a monetary order for unpaid rent in the amount of \$5,000.00.

Unpaid Hydro Bill \$200.00

The Landlord testified that the Tenants were responsible to pay 4/5 of the hydro costs. The Landlord testified that the Tenants did not pay the hydro costs for the months of July 2019 and August 2019. The Landlord provided a copy of the tenancy agreement that provides the Tenants are responsible for 4/5 of hydro costs.

The Landlord stated that he believes he provided a copy of the hydro bills in his documentary evidence. After reviewing all of the Landlord's documentary evidence, hydro bills were not located.

Damage

The Landlord testified that the Tenants damaged the carpet and bathroom door. The Landlord testified that there were rooms in the unit that were painted without permission and there were holes in some walls. The Landlord testified that the master bedroom required repainting. The Landlord testified that lightbulbs and switches were missing. The Landlord testified that there was a large amount of garbage that required removal and disposal. The Landlord provided numerous photographs showing damage to the rental unit.

The Landlord's application indicates that the Landlord is seeking \$1,000.00 for damage to the unit. At the hearing the Landlord stated that he wants to be compensated for seven days at \$150.00 per day and wants to recover the cost of his receipts and repairs.

The Landlord provided receipts for the following materials and costs:

Garbage disposal cost September 7, 2019	\$32.03
Garbage disposal cost August 31, 2019	\$19.22
Sockets	\$10.17
Blinds	\$374.96
Wood	\$14.94
Door	\$164.64
Clicker Tran	\$59.98
Misc.	\$55.72
Brack / Energizer	\$30.30
Lights	\$89.85
Paint	\$182.12
Unknown	\$36.46
Total	\$1,070.39

Security Deposit

The Landlord is seeking to keep the security deposit of \$1,250.00 in partial satisfaction of his claims.

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.

Residential Tenancy Branch Policy Guideline # 16 states 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.

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

Loss of Rent

Residential Tenancy Policy Guideline # 3 Claims for Rent and Damages for Loss of Rent provides the following information:

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.

...

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.

I find that the Tenants failed to pay the rent owing under the tenancy agreement for the month of August 2019. I also find that the Tenants breached the fixed term tenancy agreement by vacating the rental unit prior to the end of the fixed term tenancy. The Tenants are responsible to pay the rent owing under the agreement until the date the unit is re-rented. I accept the Landlord's testimony that he advertised the unit in August 2019 and was able to re-rent the unit as of October 1, 2019.

I award the Landlord the amount of \$5,000.00 for unpaid rent.

Hydro

I accept the Landlord's testimony and evidence that the Tenants are required to pay 4/5 of the hydro costs. The Landlord failed to provide any documentary evidence to prove a loss and the specific amount of the loss. The Landlord's claim for unpaid hydro costs is dismissed.

Damage

The Landlord's application that was served on the respondents indicates the Landlord is seeking \$1,000.00 for damage caused by the Tenant. The Landlord is not permitted to increase the amount of the claim at the hearing. The Landlord's claim is limited to the \$1,000.00 amount that was identified in the application that was served to the respondents.

After reviewing the Landlord's photographic evidence and documentary evidence of receipts for materials and other costs, I find that the Landlord has provided sufficient evidence that the rental unit was damaged. I find that the Tenants are responsible for damage to the rental unit. The Landlord has proven that he has suffered a loss in excess of the amount he has claimed.

I award the Landlord the amount claimed of \$1,000.00 for damage and repair costs to the rental unit.

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 his claims, 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 \$6,100.00 comprised of \$5000.00 in rent; \$1000.00 for damage; and the \$100.00 fee paid by the Landlord for this hearing. After setting off the security deposit of \$1,250.00 towards the claim of \$6,100.00, I find that the Landlord is entitled to a monetary order in the amount of \$4,850.00. 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 and are responsible to pay the rent until the rental unit was re-rented.

The Tenants left the rental unit unclean and damaged. The Tenants are responsible for damage and repair cost to the rental unit.

The Landlord has established a monetary claim in the amount of \$6,100.00. I order that the Landlord can keep the security deposit in the amount of \$1,250.00 in partial satisfaction of the Landlord's claims.

I grant the Landlord a monetary order in the amount of \$4,850.00.

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: December 18, 2019

Residential Tenancy Branch