



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Code MNR, MND, MNSD, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord filed under the Residential Tenancy Act (the “Act”), for a monetary order for unpaid rent, for damages to the unit, for an order to retain the security deposit and pet damage deposit in partial satisfaction of the claim and to recover the filing fee.

The landlord’s agent attended the hearing. As the tenants did not attend the hearing, service of the Notice of Dispute Resolution Hearing was considered.

The Residential Tenancy Branch Rules of Procedure states that each respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing.

The landlord’s agent testified the Application for Dispute Resolution and Notice of Hearing were sent by registered mail on October 25, 2019, and successfully delivered on November 7, 2019. I find that the tenants have been duly served in accordance with the Act.

The landlord’s agent appeared gave testimony and was provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts and issues in this decision.

Issues to be Decided

Is the landlord entitled to a monetary order for unpaid rent?

Is the landlord entitled to monetary compensation for damages?

Is the landlord entitled to retain the security deposit and pet damage deposit in partial satisfaction of the claim?

Background and Evidence

The tenancy began on October 1, 2018. Rent in the amount of \$2,800.00 was payable on the first of each month. The tenants paid a security deposit of \$1,400.00 and a pet damage deposit of \$1,400.00. The tenancy ended on September 30, 2019.

A move-in and move-out condition inspection report was completed. Filed in evidence is a copy of the report.

The landlord claims as follows:

a.	Unpaid rent for September 2019	\$2,800.00
b.	NSF and Late fees	\$ 150.00
c.	Wall repair and oven cleaning	\$1,850.00
d.	Filing fee	\$ 100.00
	Total claimed	\$4,900.00

Unpaid rent for September 2019

The landlord's agent testified that the tenants did not pay rent for September 2019 and lived in the rental unit. The landlord seeks to recover unpaid rent in the amount of \$2,800.00.

NSF and Late fees

The landlord's agent testified that the tenants rent cheques for November 2018, August and September 2019 were returned NSF. The agent stated that the tenancy agreement provides a clause that they are entitled to recover NSF fees and late rent fee. The landlord seeks to recover \$150.00.

Wall repair and oven cleaning

The landlord's agent testified that the tenants caused damage to walls in the rental unit which were acknowledged in the move-out condition inspection report. The agent stated that the tenants patched the holes; however, they did not paint the damage. The agent

stated the rental unit was painted prior to the tenants move-in to the premise. The landlord seeks to recover the cost of the repair in the amount of \$1,800.00.

The landlord's agent testified that the stove was left dirty by the tenants which was noted in the move-out condition inspection report and they had to have it cleaned. The landlord seeks to recover the cost of cleaning in the amount of \$50.00.

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, the landlord has the burden of proof to prove their claim.

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 September 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.*

...

I accept the undisputed testimony of the landlord's agent that the tenants failed to pay rent for September 2019. I find the tenants breached section 26 of the Act and this

caused losses to the landlord. Therefore, I find the landlord is entitled to recover unpaid rent in the amount of **\$2,800.00**.

NSF and Late fees

I accept the undisputed testimony of the landlord's agent that the tenants rent cheque was NSF on three occasion, causing the tenants rent to be paid late. The tenancy agreement provides a clause that the landlord is entitled to recover NSF fees and late payments of rent fees of \$25.00 for each breach. I find the tenants breached the tenancy agreement when they failed to pay rent on time. Therefore, I find the landlord is entitled to recover the cost of **\$150.00**.

Wall repair and oven cleaning

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.

I accept the undisputed testimony of the landlord's agent that the tenants caused damage to the walls, which had to be repainted. I find the tenants breached section 37 of the Act, when they failed to repaint the walls that were damaged, and this caused losses to the landlord. Therefore, I find the landlord is entitled to recover the cost of the repair in the amount of **\$1,800.00**.

I accept the undisputed testimony of the landlord's agent that the tenants left the stove dirty. I find the tenants breached section 37 of the Act, when they failed to clean the stove. Therefore, I find the landlord is entitled to recover the cost of cleaning in the amount of **\$50.00**.

I find that the landlord has established a total monetary claim of **\$4,900.00** comprised of the above described amounts and the \$100.00 fee paid for this application.

I order that the landlord retain the security deposit of **\$1,400.00** and pet damage deposit of **\$1,400.00** in partial satisfaction of the claim and I grant the landlord an order under section 67 of the Act for the balance due of **\$2,100.00**.

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.

Conclusion

The landlord is granted a monetary order and may keep the security deposit and pet damage deposit in partial satisfaction of the claim and the landlord is 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: March 09, 2020

Residential Tenancy Branch