



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR MNDC FF / MNDC FF

Introduction

This hearing was convened in response to cross-applications by the parties pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

Landlord:

- a monetary order for unpaid rent and compensation for damage or loss pursuant to section 67;
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

Tenant:

- a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

The hearing was conducted by conference call. All named parties attended the hearing and were given a full opportunity to provide affirmed testimony, to present evidence and to make submissions. No issues were raised with respect to the service of the respective applications and evidence submissions on file.

Issues

Is the landlord entitled to a monetary award for unpaid rent and compensation for damage or loss?

Is the landlord entitled to recover the filing fee for this application from the tenant?

Are the tenants entitled to a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement?

Are the tenants entitled to recover the filing fee for this application from the landlord?

Background and Evidence

The parties entered into a written agreement to begin a tenancy on December 1, 2019 for a one-year fixed term. The monthly rent was \$1495.00 payable on the 1st day of each month. A security deposit cheque was provided by the tenants, but the landlord was not able to cash it.

The parties did a move-in inspection on November 30, 2019. Following the inspection, the tenants refused to occupy the rental unit. The tenants broke the fixed term lease and found alternative accommodation.

The tenant testified that the unit was not clean, mouldy and the carpets were stained. The tenant testified that he had a U-Haul truck full of his belongings and labourers hired to assist with the move. The tenant testified that the landlord offered to send cleaners after they moved in, but the tenants did not want the disruption after moving in. The tenant argued the work required was extensive and they did not want to wait days for it to be completed. The tenants are claiming \$2000.00 for U-haul rental fees, storage and labour expenses.

The landlord testified that the tenants came for the move-in one day early so the landlord tried to accommodate them. The landlord testified they tried to move things around so the tenants can move their belongings in while the cleaning work was completed. The landlord testified the cleaning work required was not extensive and could have easily been done with the tenants and their belongings in the unit. The landlord testified the unit was clean within a day or two.

The landlord is claiming loss of rent in the amount of \$648.00 for a two-week period before they secured new tenants. The landlord is also claiming liquidated damages in the amount of \$1495.00 for breach of the fixed term lease. The landlord testified the liquidated damages are to compensate the landlord for costs associated with securing a new tenant. The landlord testified the tenant's expectations were too high and the unit was in a similar condition as when the tenants first viewed the unit.

Analysis

Section 7 of the Act provides for an award for compensation for damage or loss as a result of a landlord or tenant not complying with this Act, the regulations or their tenancy agreement.

As per section 45 of the Act, a tenant may not end a fixed term tenancy earlier than the date specified in the tenancy agreement as the end of the fixed term unless the landlord has breached a material term of the tenancy agreement.

Residential Tenancy Policy Guideline #8, Unconscionable and Material Terms, provides the following guidance:

In order to end a tenancy for a breach of a material term, the party alleging the breach must inform the other party in writing of the following:

- that there is a problem;
- that they believe the problem is a breach of a material term of the tenancy agreement;
- that the problem must be fixed by a deadline included in the letter, and that the deadline be reasonable; and
- that if the problem is not fixed by the deadline, the party will end the tenancy.

I find the tenants breached the tenancy agreement by ending the fixed term tenancy early. The tenants failed to provide the landlord with a reasonable opportunity to correct any alleged breach. I find the tenants could have been mitigated losses by permitting the landlord to complete the cleaning work with their belongings moved into the unit. I find the tenants actions of breaking the lease in the circumstances was not warranted.

The tenants' application is dismissed without leave to reapply.

As the tenants were not successful in this application, I find that the tenants are not entitled to recover the \$100.00 filing fee paid for this application.

The tenancy agreement signed by the parties stipulates the landlord may require the tenant to pay a sum of \$1,495.00 as liquidated damages if the tenant terminates the tenancy before the end of the fixed term.

I find the amount of \$1,495.00 as being a reasonable pre-estimate of the loss in order to compensate the landlord for any administrative costs incurred in re-renting the unit. I

find this amount is not extravagant and does not constitute a penalty. I award the landlord **\$1,495.00** in liquidated damages as claimed.

I accept the landlord's testimony and evidence and find the landlord mitigated loss of rent by re-renting the rental unit as soon as possible but suffered a loss of rent for the two-week period of December 1, 2019 to December 14, 2019. I award the landlord **\$648.00** for loss of rent as claimed.

As the landlord was successful in this application, I find that the landlord is entitled to recover the **\$100.00** filing fee paid for this application for a total monetary award of **\$2,243.00**.

Conclusion

Pursuant to section 67 of the *Act*, **I grant the landlord a Monetary Order in the amount of \$2,243.00**. Should the tenants fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

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: April 27, 2020

Residential Tenancy Branch