



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 landlords filed under the Residential Tenancy Act (the “Act”), for a monetary order for unpaid rent, for damages to the unit, or an order to retain the security deposit in partial satisfaction of the claim and to recover the cost of the filing fee.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing.

The parties confirmed receipt of all evidence submissions and there were no disputes in relation to review of the evidence submissions

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.

Preliminary matters

At the outset of the hearing the landlord requested to amend their application to reduce the amount for damages as the actual amount was less than the estimated amount. I allow the amendment as it is not prejudicial to the tenants.

Issues to be Decided

Are the landlords entitled to a monetary order for unpaid rent?

Are the landlords entitled to monetary compensation for damages?

Are the landlords entitled to retain the security deposit in partial satisfaction of the claim?

Background and Evidence

The parties agreed that the tenancy began on June 16, 2019. Rent in the amount of \$1,750.00. The tenants paid a security deposit of \$875.00. The landlord collected a relisting fee of \$550.00, which was later kept as a pet damage deposit. The tenancy ended on April 26, 2020.

The landlords claims as follows:

a.	Unpaid rent April 2020 and late fee	\$ 900.00
b.	Cleaning and weeding	\$ 155.00
c.	Filing fee	\$ 100.00
	Total claimed	\$1,155.00

The landlord testified that the tenants made a partial pay of rent for April 2020, in the amount of \$375.00. The landlord stated they allowed that the pet damage deposit was agreed to be applied, this left a balance due of unpaid rent. The landlords seek to recover unpaid rent in the amount of \$875.00.

The landlord testified that they seek to recover the late payment of rent fee in the amount of \$25.00 as April 2020 rent was not paid.

The landlord testified that they had to do two hours of cleaning as the blinds were not clean, they had to clean a couple of windows, and wipe out some cupboards. The landlord stated that the tenant also did not pull out the stove and they had to clean underneath and the sides. The landlord seeks to recover the cost of \$50.00.

The landlord testified that the tenant did not do the weeding and there was weeds along the driveway, yard and the back of the main house. The landlord seeks to recover the cost of the weeding in the amount of \$105.00.

The landlord stated they did not submit photographs to support their claim, just the receipts.

The tenants testified that they did not pay the full amount of rent for April 2020, as they believed there was going to be a problem with the return of the security deposit and pet damage deposit.

The tenants testified that they should not have to pay a late fee as the landlord had their deposits which was used to pay the rent.

The tenants testified they left the rental unit cleaned and they had cleaned the blinds and cupboards. The tenants admitted they did not pull out the stove and it simply need a wipe to clean the spill. The tenant stated that their photographs support that the rental unit was left cleaned.

The tenants testified that they did the weeding. The tenant stated that the only area they did not weed was behind the fence where the garbage bins were kept. The tenants stated that they did weed this area before and found it to be unsafe. The tenants stated that this area is behind a fence and was not their responsibility. Filed in evidence are photographs.

The landlord argued that the tenants only took photographs of the areas that were properly weeded, not the areas of concern. The landlord referred to their receipt.

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 landlords have 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-complying 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.

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.*

...

The evidence of the tenants were that they withheld a portion of the rent for April 2020, because they believed the landlord would not return their security deposit at the end of the tenancy.

However, the tenants did not have the written consent of the landlord to apply the security deposit towards the rent. At no time does the tenant have the right to simply withhold rent because they feel they are entitled to do so. I find the tenants have breached section 26 of the Act when they failed to pay rent when due under the tenancy agreement and this has caused losses to the landlords.

In this case pet damage deposit was already applied of late rent this was agreed to by the landlords. I find the landlords are entitled to keep the pet damage deposit, this leave a balance due of \$825.00. Therefore, I find the landlords are entitled to recover unpaid rent int the amount of **\$825.00**.

As the tenants did not pay rent on time in accordance with their tenancy agreement, I find the landlords are entitled to recover the late fee in the amount of \$25.00.

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.*

In this case, both parties have provided a different version of event to the state of the rental cleaning and weeding. However, the landlord provided no photographs to support

their version, while I accept that the tenants did not wipe the side of stove, as this was admitted. I find that alone does not support the rental unit was left unreasonably clean as defined in the Act. I find without further evidence, such as photographs the landlord has not met that burden. Therefore, I dismiss the landlord's claim for cleaning and weeding.

I find that the landlords have established a total monetary claim of **\$1,000.00** comprised of the above described amounts and the \$100.00 fee paid for this application.

I order that the landlords retain the security deposit of **\$875.00** in partial satisfaction of the claim and I grant the landlords an order under section 67 of the Act for the balance due of **\$125.00**.

This 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 landlords are granted a monetary order and may keep the security deposit in partial satisfaction of the claim and the landlords are 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: May 29, 2020

Residential Tenancy Branch