



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Capital Region Housing Corporation and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNR-S, FF

Introduction

This hearing dealt with the landlord's application for dispute resolution under the Residential Tenancy Act (Act) for:

- a monetary order for unpaid rent;
- authority to keep the tenants' security deposit to use against a monetary award; and
- recovery of the filing fee.

The landlord and tenant CJ attended, the hearing process was explained and they were given an opportunity to ask questions about the hearing process.

The tenant confirmed receiving the Application for Dispute Resolution, evidence, and Notice of Hearing (application package).

Thereafter both parties were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch Rules of Procedure (Rules). However, not all details of the parties' respective submissions are reproduced here; further, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

Is the landlord entitled to monetary compensation from the tenants and recovery of the filing fee?

Background and Evidence

The landlord submitted a written tenancy agreement showing a tenancy start date of October 1, 2018, a 12 month fixed term, monthly rent of \$1,528, due on the 1st day of the month, and a security deposit of \$764 being paid by the tenants to the landlord.

The landlord retained the tenants' security deposit, having made this claim against it.

The agent said that the landlord received the tenants' written notice to vacate on June 10, 2020, for a move-out date of July 9, 2020. Filed into evidence was a copy of the written notice and the landlord's response.

The landlord submitted the tenants agreed to pay the monthly rent for July, but that their cheque was returned.

The agent submitted that the insufficient notice caused a loss of rent revenue for July, 2020, although they did advertise the rental unit in order to obtain a new tenant as soon as possible. Filed into evidence were copies of the advertisements.

The agent submitted that the tenants agreed to the amount of \$105 for carpet cleaning and \$60 for parking being deducted from their security deposit, as shown by the "Security Deposit Return Form" filed into evidence.

In response, the tenant agreed that they provided the notice to vacate on June 10, 2020, but asserted they vacated earlier. The tenant also asked if the landlord was given a monetary award, if it was possible to make payments.

Analysis

Based on the relevant oral and written evidence, and on a balance of probabilities, I find as follows:

Test for damages or loss

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in sections 7 and 67 of the Act. Accordingly, an applicant must prove each of the following:

1. That the other party violated the Act, Residential Tenancy Regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

In this instance, the burden of proof is on the landlord to prove the existence of the damage/loss and that it stemmed directly from a violation of the Act, regulation, or tenancy agreement on the part of the tenant. Once that has been established, the landlord must then provide evidence that can verify the value of the loss or damage. Finally, it must be proven that the landlord did whatever was reasonable to minimize the damage or losses that were incurred.

Under section 45(1) of the Act, a tenant may end a month to month tenancy by giving the landlord notice to end the tenancy effective on a date that is at least one clear calendar month before the next rent payment is due and is the day before the day of the month that rent is payable. In other words, in this case, if the tenants wanted to end the tenancy by June 30, 2020, the latest day the tenants could provide written notice to end the tenancy was May 31, 2020.

In this case, the tenants provided a written notice on June 10, 2020, for a vacate date of July 9, 2020. By giving notice on June 10, 2020, the tenants are obligated to pay July's rent. The tenants did not pay the monthly rent for July 2020.

I therefore find the landlord submitted sufficient evidence that the tenants failed to give a proper written notice that they were vacating, and that the said insufficient notice caused the landlord to suffer a loss of rent revenue for the following month of July 2020. I therefore find the landlord is entitled to a monetary award of \$1,528, as claimed.

As the landlord was successful, I grant the landlord recovery of their filing fee of \$100.

The landlord applied to keep the tenant's security deposit and I allow the landlord's request to retain the security deposit in partial satisfaction of their monetary award. Although the security deposit paid was \$764, I find the evidence shows the tenants have previously agreed to deductions of \$105 for carpet cleaning and \$60 for parking, or a total of \$165. Therefore, I find the remaining security deposit held by the landlord is \$599.

Conclusion

I issue a monetary order in the landlord's favour in the amount of \$1,029.00 under the following terms:

ITEM	AMOUNT
1. Unpaid rent for July 2020	\$1,528.00
2. Filing fee	\$100.00
3. Less remaining security deposit	-\$599.00
TOTAL MONETARY ORDER	\$1,029.00

The landlord is provided with this order in the above terms and the tenant must be served with this order as soon as possible. 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: November 9, 2020

Residential Tenancy Branch