



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, loss of rent, and other money owed, for an order to retain the security deposit in partial satisfaction of the claim and recover 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 tenant confirmed they received the landlord’s evidence. The landlord’s agent stated that they receive no evidence from the tenant. The tenant testified they sent their evidence by registered mail a Canada post tracking number was provided.

I have reviewed the Canada post tracking number. The tracking number shows it was successfully delivered to the landlord’s office on November 18, 2020. I find the landlord was served in accordance with the Act. Therefore, I will allow the tenant’s evidence to be considered.

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

Are the landlords entitled to a monetary order for unpaid rent, loss of rent and other money owed?

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

Background and Evidence

The parties agreed that they entered into a fixed term tenancy which began on March 1, 2020 and was to expire on April 30, 2021. Rent in the amount of \$1,650.00 was payable on the first of each month. The tenants paid a security deposit of \$825.00 and a pet damage deposit of \$825.00 was required to be paid; however, it never was paid. The tenancy ended on September 30, 2020.

The landlord claims as follows:

a.	Unpaid rent for April 2020	\$ 49.93
b.	Unpaid utilities	\$ 335.19
c.	Liquidated damages	\$ 825.00
d.	Loss of rent for October	\$1,650.00
e.	Filing fee	\$ 100.00
	Total claimed	\$2,860.12

Unpaid rent for April 2020 and utilities

At the outset of the hearing the tenant agreed that they are responsible for the unpaid rent for April 2020 and the unpaid utilities in the amount of \$385.12.

Liquidated damages

The landlord's agent testified that tenancy ended because the tenant breach the tenancy agreement and were evicted from the rental unit. The agent stated because the tenancy ended due to the tenants' breach of the Act that they are entitled to recover the liquidated damages as set out in clause 39 of the tenancy agreement.

The tenant testified that they did not understand what a liquidated damage clause was.

Loss of rent for October

The landlord's agent testified that the landlord should be entitled to recover loss of rent for October 2020, because the tenant informed them that they would not allow any showings of the rental unit by text message. The agent stated that they never served the tenant with any written notice of a date or time that they wanted to show the rental unit because of the tenants' text message and due to the conflict between the parties.

The tenant testified that at that time they had an outstanding hearing, which was to determine if their tenancy would end and informed the landlord that showings should not take place until that issue is heard.

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-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.

April 2020, rent and utilities

The tenant admitted this amount is owed. Therefore, I find the landlords are entitled to recover unpaid rent for April 2020, and unpaid utilities in the total amount of **\$385.12**.

Liquidated damages

The tenancy ended due to a breach of the Act by the tenants. The tenancy agreement provides a liquidated damages clause that should the tenants not meet their obligations under the agreement that the landlord is entitled to this amount, which is the estimated cost of re-renting the premise. While the landlord has claimed the amount of \$825.00 the actual amount in the tenancy agreement is \$625.00. Therefore, I find the landlords are entitled to recover the amount listed in the agreement in the amount of **\$625.00**.

Loss of rent for October

I am not satisfied that the landlords are entitled to loss of rent for October 2020, due to the tenants not allowing showings of the rental unit. While I accept the tenants informed

the landlord that they would not allow showings until the hearing on the issue of the tenancy ending was heard; however, that alone is not a breach of the Act.

The evidence was that the landlord never served the tenants with the required written 24 hour notice with a date, or time that they wanted access to the rental unit. I cannot find a breach of the Act by the tenants, when the landlords did not give any such notice. Therefore, I dismiss this portion of the landlords' claim.

I find that the landlords have established a total monetary claim of **\$1,110.12** 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 **\$825.00** in partial satisfaction of the claim and I grant the landlords an order under section 67 of the Act for the balance due of **\$185.12**.

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.

At the end of the hearing the tenant confirmed their forward address for service. I have noted this address on the covering page of this decision.

Conclusion

The landlord(s) are/is granted a monetary order and may keep the/a portion of the security deposit in partial satisfaction of the claim and the landlord(s) are/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: December 15, 2020

Residential Tenancy Branch