



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute 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 and unpaid utilities, loss of rent, for damages to the unit, for an order to retain the security deposit in partial satisfaction of the claim and to recover the cost of the filing fee.

The landlord also made an application for substituted service, which was granted on November 12, 2020. The landlord was permitted to serve each of the tenant’s by email. This order should be read in conjunction with this decision.

The landlord testified that they served the tenants, by email with all the documents required in the substituted service order. File in evidence is a copy of the two email, showing the documents were sent to each of the tenants on November 18, 2020.

I find the tenants were served on November 21, 2020, three days after it was sent.

The landlord 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 and utilities?

Is the landlord entitled to monetary compensation for damages?

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

Background and Evidence

The parties entered into a fixed term tenancy agreement that began on March 1, 2020 and was to expire on February 28, 2021. Rent in the amount of \$1,450.00 was payable on the first of each month. The tenants paid a security deposit of \$725.00 and a pet damage deposit of \$725.00. The tenancy ended on September 9, 2020.

The landlord claims as follows:

a.	Unpaid rent a loss of rent	\$5,500.00
b.	Unpaid utilities	\$ 325.14
c.	Late fees 6 x \$25.00	\$ 150.00
d.	Damages	\$ 175.78
e.	Filing fee	\$ 100.00
	Total claimed	\$6,450.92

Unpaid rent and loss of rent

The landlord testified that the tenants were in rent arrears for May, June, and July 2020. The landlord stated that the tenants paid \$1,075.00 for May 2020 rent, \$750.00 for June 2020 rent, and \$700.00 for July rent. The landlord stated that the tenants did not pay any rent for August and September 2020.

The landlord testified that the tenants did not give proper notice to end the tenancy and they found out on September 9, 2020, that they vacated the premise. The landlord stated they immediately tried to find a new renter by going back to original applicants, and advertising. The landlord stated that they were able to find a new renter commencing October 15, 2020; however, they loss half a month rent.

The landlord testified that they should be entitled to recover unpaid rent and loss of half months rent in the total amount of \$5,500.00.

Unpaid utilities

The landlord testified that the tenants were required to pay for their own utilities. The landlord stated that the utilities were in the tenants' name; however, because they were not paid by the tenants, they were going to be transferred to their property taxes. The

landlord stated that they had no option but to pay for the outstanding utilities. The landlord seeks to recover the cost of the utilities in the amount of \$325.14.

Filed in evidence is a copy of the utilities bills that were outstanding

Late fees 6 x \$25.00

The landlord testified that there is clause in their tenancy agreement that they are entitled to claim a late fee for rent in the amount of \$25.00. The landlord stated that the tenants rent was late six times. The landlord seeks to recover the amount of \$150.00

Damages

The landlord testified that 2 of the doors were scratched by the tenant's dog, which most of the damage was able to be fixed by painting. The landlord stated one door was damaged beyond repair as it looked like it had been kicked open, cracking the door. The landlord stated that they had to get a replacement door at the cost of \$80.63.

The landlord stated that they transition strip between the bedroom and ensuite was destroyed by the tenant's dog, chewing and peeing. The landlord stated that they had to pay the amount of \$32.48.

The landlord testified that they had to change the lock because the tenants did return the key. The landlord seeks to recover the cost of \$62.67.

Filed in evidence are photographs and receipts.

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 and loss of rent

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.

How to end a tenancy is defined in Part 4 of the Act.

Tenant's notice (fixed term)

45 (2) A tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that
(a) is not earlier than one month after the date the landlord receives the notice,
(b) is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and
(c) is the day before the day in the month, or in the other period on which the tenancy is based,

I accept the undisputed evidence of the landlord that the tenants did not pay all rent owed for May, June, and July 2020. I further accept that the tenants did not pay any rent for August and September 2020. I find the tenants breached the Act and their tenancy agreement and this caused losses to the landlord.

I accept the undisputed evidence of the landlord that the tenants did not give the landlord written notice to end the tenancy. I accept the tenants vacated the rental unit on September 9, 2020. I accept the undisputed evidence of the landlord that they were unable to find a new renter until October 15, 2020. I find the tenants breached the Act

and the tenancy agreement as the earliest date they were legally entitled to end the tenancy was February 28, 2021. I find the landlord mitigate the loss as they were able to find a new renter within a reasonable time. I find the landlord suffered a loss due to the tenants' breach. The landlord is entitled to be in the same position had the tenants not breached the tenancy agreement and the Act.

Based on the above, I find the landlord is entitled to recover unpaid rent as shown above and loss of rent for October 2020, in the total amount of **\$5,500.00**.

Unpaid utilities

I accept the undisputed evidence of the landlord that the tenants did not pay the utilities owed at the end of the tenancy and that the landlord had no option except to pay this amount as it was going to be transferred to their property tax. I find the tenants breached the Act when they failed to pay for those utilities, and this caused losses to the landlord. Therefore, I find the landlord is entitled to recover unpaid utilities in the amount of **\$325.14**.

Late fees 6 x \$25.00

I am satisfied that the tenants breached their tenancy agreement and the Act when they failed to pay their rent on time. The tenancy agreement states that the landlord is entitled to recover a \$25.00 fee for each late payment. I find the tenants were late paying rent on six occasions. Therefore, I find the landlord is entitled to recover the amount of **\$150.00**.

Damages

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 evidence of the landlord that the tenants broke the door, the transition strip and did not return the keys that gave access to the premise. I find the tenants breached the Act when they failed to make the repairs and return the keys. Therefore, I find the landlord is entitled to recover the cost of damage in the total amount of **\$175.78**.

I find that the landlord has established a total monetary claim of **\$6,450.92** 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 **\$725.00** and pet damage deposit of **\$725.00** in partial satisfaction of the claim and I grant the landlord an order under section 67 of the Act for the balance due of **\$5,000.92**.

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 tenants

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, 2021

Residential Tenancy Branch