



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR-S, MND-S, MNDC-S, FF

Introduction

This matter convened by teleconference on December 15, 2020 to deal with the landlords' two applications for dispute resolution under the Residential Tenancy Act (Act).

The landlords in their combined applications applied for:

- a monetary order for unpaid rent;
- compensation for alleged damage to the rental unit by the tenants;
- compensation for a monetary loss or other money owed;
- authority to keep the tenants' security deposit to use against a monetary award;
- and
- to recover the cost of the filing fee

All listed parties attended the original hearing and the matter of the tenants' evidence was considered.

An Interim Decision was issued on December 15, 2020. Due to preliminary issues and other considerations contained therein, the Interim Decision is incorporated by reference and should be read in conjunction with this Decision.

I ordered the hearing be adjourned and reconvened on the date and time contained in the attached Notice of Adjourned Hearing, for the purpose of hearing from the parties in relation to the landlords' application.

At the reconvened hearing, all listed parties attended.

At the reconvened hearing, the parties were provided the opportunity to present affirmed evidence orally and to refer to relevant evidence submitted prior to the hearing, and make submissions to me.

I have reviewed all oral and documentary evidence before me that met the requirements of the Residential Tenancy Branch Rules of Procedure (Rules); however, I refer to only the relevant evidence regarding the facts and issues in this decision.

Words utilizing the singular shall also include the plural and vice versa where the context requires.

Preliminary and Procedural Matters-

As mentioned in my Interim Decision of December 15, 2020, the landlords requested to disregard their original application, ending in “55” on the style of cause page, and proceed with the second one, ending in “77”, as the second application combined their original claim as well as a new claim for cost of repairs.

I interpreted this statement as the landlords’ request to withdraw their first application.

I grant this request and therefore the file is now **closed**.

Issue(s) to be Decided

Are the landlords entitled to monetary compensation from the tenants, to keep their security deposit to satisfy a portion of a monetary award, and recovery of the filing fee?

Background and Evidence

The evidence showed that this month-to-month tenancy began on April 1, 2020, for a monthly rent of \$1,500, due on the 1st day of the month, and a security deposit of \$750 being paid by the tenants to the landlords.

The landlords retained the tenants’ security deposit, having made this claim against it.

The landlords’ final monetary claim is listed as \$1,075, comprised of \$750 for unpaid monthly rent for September 2020, repair of a broken tap for \$125, and the filing fee of \$100 for each of their two applications.

Although the landlords' claim is for the entire monthly rent of September, 2020, they listed the amount of \$750 due to their deduction of the tenants' security deposit of \$750.

As to the claim for unpaid monthly rent, the landlord submitted that the tenants were given a One Month Notice to End Tenancy for Cause (Notice), on August 19, 2020, listing an effective move-out date of September 30, 2020.

The evidence showed that the tenants filed an application for dispute resolution to dispute the Notice, which was ultimately dismissed in a Decision by another arbitrator, dated October 9, 2020, as the tenants disclosed they had already vacated the rental unit on August 29, 2020. Filed into evidence was a copy of that Decision.

Here, the landlord submitted that the tenants provided notice to them on August 28, 2020, that they were vacating the rental unit by August 31, 2020. The landlord submitted that the three days notice was insufficient notice in ending the tenancy, causing a loss of rent revenue for September 2020.

As to the claim for a faucet repair, the landlord submitted that tenant RW broke the outside faucet, which took him a long time to repair. The landlord submitted that he is claiming the cost of his labour in making the repair. Filed into evidence was a receipt type document, from the landlord to the tenant, with a request to pay \$125.

Tenants' response –

The tenant, RW, submitted that he sent the landlords plenty of emails and tried, without success, to arrange an early end to the tenancy. The tenant submitted that they wanted to end the tenancy early, due to the harassment and abuse by the landlords.

The tenant submitted that the tap was an old tap, and he was surprised when the tap handle stripped in his hand, with regular force. It was left in an open position and the tenant denied he caused the damage. This occurred on August 7, 2020.

The tenant submitted there was no final walk-through of the house and they left the rental unit in immaculate condition.

Analysis

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

In a claim for damage or loss under the Residential Tenancy Act, Residential Tenancy Branch Regulations or tenancy agreement, the claiming party, the landlord in this case, has to prove their claim with a balance of probabilities.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the obligation to prove their claim and the claim fails.

Under section 7(1) of the Act, if a landlord or tenant does not comply with the Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other party for damage or loss that results.

Unpaid monthly rent, September 2020 –

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 the end of August 2020, the latest day the tenants could provide written notice to end the tenancy was July 31, 2020.

In this case, the tenants provided a written notice on August 28, 2020, for a vacate date of August 31, 2020. By giving notice on August 28, 2020, the tenants were obligateded to pay the rent for September 2020 and did not.

I therefore find the landlords 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 landlords to suffer a loss of rent revenue for the following month of September 2020. I therefore find the landlords have established a monetary claim of \$1,500.

Faucet repair –

Damage to a landlord's property or other losses are not the responsibility of the tenant unless the tenant has been negligent in the duty owed to the landlord or have breached the Act.

The issue is whether the tenant was negligent or breached their responsibility under the Act, which is to leave the rental unit reasonably clean and undamaged, less reasonable wear and tear.

The landlord submitted a receipt from the landlord. There was not an invoice or receipt from an independent person making the repairs or breakdown of the hours.

Overall, I find the landlord submitted insufficient evidence to prove that the tenant was using the faucet negligently, in any manner other than its intended purpose, causing the faucet to become stripped. I find, rather, that this typically shows the age of the handle, as claimed by the tenant.

The tenant denied he caused the damage by using the faucet any way other than the usual way and the landlord's evidence failed to prove otherwise on a balance of probabilities.

I dismiss the landlord's claim for a faucet repair.

As the landlords were successful, I grant the landlords recovery of their filing fee of \$100.

I dismiss the landlords' request for a second filing fee for their two applications. It was the landlords' choice to file an additional application, incurring a second filing fee, rather than amend their original monetary claim.

The landlord applied to keep the tenants' security deposit and I allow the landlords' request to retain the security deposit of \$750 in partial satisfaction of their monetary award.

Conclusion

I issue a monetary order in the landlords' favour in the amount of \$850 under the following terms:

ITEM	AMOUNT
1. Unpaid rent for September 2020	\$1,500.00
2. Filing fee	\$100.00

3. <i>Less security deposit</i>	-\$750.00
TOTAL MONETARY ORDER	\$850.00

The landlords are provided with this order in the above terms and the tenants 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: March 12, 2021

Residential Tenancy Branch