



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MNDC, 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 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’s agents attended the hearing. As the tenants did not attend the hearing, service of the Notice of Dispute Resolution Hearing was considered.

The Residential Tenancy Branch Rules of Procedure states that each respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing.

The landlord’s agents testified the Application for Dispute Resolution and Notice of Hearing were sent by registered mail on December 29, 2020, Canada post tracking numbers were provided as evidence of service. The agents stated that the packages were returned unclaimed.

Section 90 of the Act determines that a document served in this manner is deemed to have been served five days later. I find that the tenants have been duly served in accordance with the Act. Refusal or neglect to pick up the package does not override the deemed service provisions of the Act.

The landlord’s agents appeared gave affirmed testimony and was provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing. The agents confirmed at the hearing that they were not making any unauthorized recording of this 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 loss of rent?

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 which began on May 1, 2020 and was to expire on November 30, 2020. Rent in the amount of \$1,520.00 was payable on the first of each month. The tenants paid a security deposit of \$700.00. The tenancy ended on October 23, 2021. A move-in and move-out condition inspection report was completed.

The landlord claims as follows:

a.	Loss of rent for November 2020	\$1,220.00
b.	Damages	\$ 675.00
c.	Filing fee	\$ 100.00
	Total claimed	\$1,995.00

The landlord's agents testified that the tenants gave notice to end their tenancy on October 21, 2020 and vacated on October 23, 2020. The agents stated that in the tenants notice to end tenancy they agreed that they would pay November 2020, rent. The agents stated that the tenants had a credit of \$300.00 on their account, and that has been deducted from the rent due. The landlord seeks to recover unpaid rent in the amount of \$1,220.00. Filed in evidence is a copy of the tenants notice to end tenancy, and that they agreed to pay November 2020, rent.

The landlord's agent testified that the tenants caused damage to the rental unit. The agents stated that the tenants agreed to the damages in the move-out condition inspection report and to the amount claimed. Filed in evidence is a copy of the move-out condition inspection report, which was signed by the tenants agreeing to the amount owed.

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.

In this case, I accept the landlord's agents undisputed testimony that the tenants gave notice to end their tenancy on October 21, 2020, with an effective date of October 23, 2020. This date was prior to the expiry of their fixed term agreement. I find the tenants breached section 45 of the Act, and their tenancy agreement as the tenants could not end their tenancy earlier than November 30, 2020,

I am also satisfied that the tenants agreed that they would pay the rent for November 2020. I find that was reasonable as the tenants did not give the landlord sufficient notice to find a new renter. Therefore, I find the landlord is entitled to recover loss of rent for November 2020, in the amount of **\$1,220.00**.

I accept the landlord's agents undisputed testimony that the tenants damaged the rental unit. This is supported by the move-out condition inspection report and in that report the tenants agreed that they were responsible for the damages and to the amount owed. I find the tenants breached section 37 of the Act when they left the rental unit damaged at the end of their tenancy. Therefore, I find the landlord is entitled to recover the cost of the damage in the amount of **\$675.00**.

I find that the landlord has established a total monetary claim of **\$1,995.00** 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 **\$700.00** in partial satisfaction of the claim and I grant the landlord an order under section 67 of the Act for the balance due of **\$1,295.00**.

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 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: April 26, 2021

Residential Tenancy Branch