



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes 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, to recover bailiff fees, to recover cleaning cost, for an order to retain the security deposit and pet damage deposit (the “Deposits”) in partial satisfaction of the claim and to recover the cost of 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 parties confirmed receipt of all evidence submissions and there were no disputes in relation to review of the evidence submissions. The parties also confirmed under affirmation that they were not making any unauthorized recording of this hearing, in compliance with the Residential Tenancy Branch Rules of Procedure 6.11.

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, bailiff fees and cleaning costs?

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

Background and Evidence

The parties agreed that the tenancy began on January 1, 2020. Rent in the amount of \$2,150.00 was payable on the first of each month. The tenants paid a security deposit of \$1075.00 and a pet damage deposit of \$500.00. The tenancy ended on January 8, 2021.

On November 24, 2020 the landlord applied under the direct request process to obtain an order of possession based on a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities. On December 21, 2020, the landlord was granted an order of possession, effective two days after served upon the tenants. I have noted the file number on the covering page of this decision.

On December 30, 2020 the tenants filed an application for review consideration, their application was dismissed as the tenants did not make that application within the statutory time limit as they stated they received the Order of Possession on December 23, 2020.

The landlords claim as follows:

a.	Unpaid rent	\$1,304.00
b.	Bailiff fees, writ of possession fee, 4 hours of landlords' time and stationary costs.	\$3,780.50
c.	Junk removal and cleaning fees	\$ 819.00
d.	Filing fee	\$ 100.00
	Total claimed	\$6,003.50

Unpaid rent

At the outset of the hearing the tenants agreed that they owe the outstanding rent.

Bailiff fees and writ of possession fee

The landlords testified that the tenants did not comply with the order of possession. The landlords stated as a result they had to go to Supreme Court and obtain a writ of possession. The landlords stated they had to pay \$120.00. Filed in evidence is a receipt.

The landlord testified that the Bailiff's enforced the writ of possession on January 8, 2021, and the tenants were removed from the property. The landlord stated that they had to pay a down payment of \$4,500.00 for their estimated services. The landlords stated they received a credit back from the Bailiff's in the amount of \$1,189.50. The landlords seek to recover the Bailiff fees in the amount of \$3,310.50. Filed in evidence is a receipt.

The tenants acknowledged that the Bailiffs did remove them from the property on January 8, 2021. The tenants stated that they believe the landlords obtain the order of possession based on fraud. The tenants stated they were late by one day to make their application for review consideration. The tenants stated that they went to Supreme Court on January 8, 2021; however, the judge did not consider their request to stay the enforcement of the writ of possession because it was too late as the Bailiffs had already executed the order.

Junk removal and cleaning fees

The landlords testified that after the Bailiffs removed the tenant and their belongings, they were left with a large amount of items that the Bailiffs determined was junk or items that had mould on them and were unsafe to remove. The landlords stated that they had to pay for junk removal and have the rental unit cleaned. The landlords seek to recover the cost they paid in the amount of \$819.00. Filed in evidence is a receipt and videos of the rental unit.

The tenants testified after they were removed from the premise, they were not given an opportunity to go back to the premise to do any cleaning. The tenants stated they feel they should have had the opportunity to do so.

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.

Unpaid rent

At the outset of the hearing the tenants agreed that they owed the landlords rent. I find the tenants breached section 26 of the Act, when they failed to pay the rent. Therefore, I find the landlords are entitled to recover unpaid rent in the total amount of **\$1,304.00**.

Bailiff fees and writ of possession fee

The tenants received the order of possession on December 23, 2020. The tenants were required to vacate the premise on December 25, 2020. The tenants' application for review consideration was dismissed on January 4, 2021, yet the tenants still did not vacate. I find the tenants breached the Act when they failed to comply with the order. As a result of the tenants' failure to comply with the order of possession the landlords had to apply to Supreme Court for a writ of possession and have the Bailiffs enforce the order on January 8, 2021. Therefore, I find the landlords are entitled to recover the writ of possession fee and the Bailiff fees in the total amount of **\$3,430.50**.

The landlords have applied to recover the cost of their time and stationary fees. No evidence was given on this at the hearing. Therefore, I decline to award any monetary compensation due to insufficient evidence. This portion of the landlords' claim is dismissed without leave to reapply.

Junk removal and cleaning fees

In this case the tenants failed to comply with the Act, and the Bailiffs removed the tenants from the rental unit on January 8, 2021. Once that order was enforced the tenants right to access the premise ceased. The landlord was left with dispose of items that the Bailiffs determined junk and have the premise cleaned. I find the landlords are entitled to recover the cost of junk removal and cleaning costs in the total amount of **\$819.00**.

I find that the landlords have established a total monetary claim of **\$5,653.50** comprised of the above described amounts and the \$100.00 fee paid for this application.

I order that the landlords retain the Deposits totaling \$1,575.00 in partial satisfaction of the claim and I grant the landlords an order under section 67 of the Act for the balance due of **\$4,078.50**.

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 landlords are granted a monetary order and may keep the Deposits in partial satisfaction of the claim and the landlords are 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: May 05, 2021

Residential Tenancy Branch