



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MND, MNSD, FFL

Introduction

On January 29, 2021, the Landlord submitted an Application for Dispute Resolution under the *Residential Tenancy Act* (“the Act”) seeking a monetary order for unpaid rent and damage, and to keep a security deposit.

The matter was set for a conference call hearing at 1:30 pm on this date. The Landlord’s agent (“the Landlord”) attended the hearing; however, the Tenants did not. The line remained open while the phone system was monitored for 27 minutes and the Tenants did not call into the hearing during this time. The Landlord called into the hearing 8 minutes late and stated that he was calling from his vehicle.

The Landlord testified that the Tenants were served with the Notice of Dispute Resolution Proceeding using registered mail sent to each Tenant on February 3, 2021. The Landlord testified that the registered mail was sent to the Tenants’ forwarding address that was provided to the Landlord at the end of the tenancy. The Landlord provided a document containing the registered mail receipt and tracking information which indicates the registered mail was delivered on February 4, 2021.

I find that the Tenants were served with notice of the hearing in accordance with the service provisions of section 89 and 90 of the Act. The hearing proceeded.

The Landlord was provided with the opportunity to present affirmed oral testimony and to make submissions during the hearing.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

- Is the Landlord entitled to a monetary order to recover a loss of rent?
- Is the Landlord entitled to a monetary order for cleaning/ damage?
- Can the Landlord keep the security deposit towards the claims?

Background and Evidence

The Landlord provided testimony confirming that the tenancy began on August 1, 2020 as a one-year fixed term tenancy. Rent in the amount of \$1,630.00 was to be paid to the Landlord by the first day of each month. The Tenants paid the Landlord a security deposit of \$840.00. The Landlord testified that the tenancy ended on January 15, 2021. The Landlord provided a copy of the tenancy agreement.

Loss of Rent

The Landlord is seeking compensation of \$2,068.32 for loss of rent for the months of February 2021 and March 2021. The Landlord submitted that the Tenants ended the fixed term tenancy early and are responsible to pay the rent until the Landlord found a new tenant.

When the Landlord was asked to provide the date that the Landlord re-rented the unit, the Landlord did not know and did not have that information at hand.

When the Landlord was asked if the rental unit was advertised in order to find a new tenant, the Landlord testified that the rental unit was advertised starting March 15, 2021.

When the Landlord was asked why it took two months from the date the Tenants vacated for the Landlord to advertise the rental unit, the Landlord replied that it took time for contractors and flooring.

When it was pointed out that the Landlords claim is for cleaning and disposal costs and that there is no claim for damage and no evidence of damage to the rental unit, the Landlord did not respond.

Cleaning Costs

The Landlord submitted that the Tenants left the rental unit unclean at the end of the tenancy. The Landlord stated that the Tenants did not attend the move out inspection. The Landlord provided photographs showing the condition and state of cleanliness of

the rental unit. The Landlord provided a copy of a move out condition inspection report which indicates that areas of the rental unit were left unclean. The inspection report indicates that the Landlord spent 8 hours cleaning the rental unit at \$30.00 per hour.

Item Removal

The Landlord submitted that the Tenants left items in the rental unit that needed to be removed and disposed of. The Landlord hired a junk removal company to pick up and dispose of the items. The Landlord provided a copy of an invoice dated January 19, 2021 in the amount of \$312.90 for the cost to remove and dispose of the items.

Security Deposit

The Landlord applied to keep the \$840.00 security deposit in partial satisfaction of the Landlord's claims.

Analysis

To be successful with a claim for compensation an applicant must prove:

1. That the other party breached the Act, regulation, or tenancy agreement.
2. That the breach caused the party making the application to incur damages or loss as a result of the breach.
3. The value of the loss; and,
4. That the party making the claim took reasonable steps to minimize the damage or loss.

Residential Tenancy Policy Guideline # 3 Claims for Rent and Damages for Loss of Rent provides the following information:

The damages awarded are an amount sufficient to put the landlord in the same position as if the tenant had not breached the agreement. As a general rule this includes compensating the landlord for any loss of rent up to the earliest time that the tenant could legally have ended the tenancy.

In all cases the landlord's claim is subject to the statutory duty to mitigate the loss by re-renting the premises at a reasonably economic rent. Attempting to re-rent the premises at a greatly increased rent will not constitute mitigation, nor will placing the property on the market for sale.

Residential Tenancy Policy Guideline #1 Landlord & Tenant - Responsibility for Residential Premises provides that the tenant must maintain "reasonable health, cleanliness and sanitary standards" throughout the rental unit or site, and property or

park. The tenant is generally responsible for paying cleaning costs where the property is left at the end of the tenancy in a condition that does not comply with that standard.

Based on the testimony and evidence of the Landlord, and on a balance of probabilities, I make the following findings:

Loss of Rent

I find that the Tenants moved out of the rental unit prior to the end of the fixed term tenancy. I find that the Tenants are responsible to pay the rent until such time as the Landlord re-rented the unit. The Landlord is responsible to mitigate against loss by taking steps to re-rent the unit.

I find that the Landlord failed to take reasonable steps to mitigate against the loss of rent. The Landlord suggested there was damage present but did not provide any evidence of damage to the rental unit or invoices for repairs that would have caused a delay in re-renting the unit. I note that the invoice for removal and disposal of items is dated January 19, 2021, and it appears to me that the 10 hours of cleaning could have been performed immediately.

Based on the evidence before me, I find that the Landlord failed to take reasonable steps to re-rent the unit until two months after the Tenants moved out and therefore the claim for a loss of rent for those two months is dismissed without leave to reapply.

Cleaning

I find that the Tenants left the rental unit unclean at the end of the tenancy. I award the Landlord the amount of \$240.00 for the cost of having the rental unit cleaned.

Item Removal

I find that the Tenants abandoned some of their possessions in the rental unit and are responsible for the Landlord's cost to have the items removed and disposed of. I award the Landlord the amount of \$312.90 for the cost to dispose of the Tenants' abandoned items.

Security Deposit

The Landlord applied against the security deposit on January 29, 2021, which is within 15 days of when the tenancy ended, and the Tenant's forwarding address was received.

Section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. Since the Landlord was successful with some of the claims, I order the Tenants to repay the \$100.00 fee that the Landlord paid to make application for dispute resolution.

I find that the Landlord has established a total monetary claim of \$652.90 comprised of \$240.00 in cleaning costs; \$312.90 for disposal costs, and the \$100.00 fee paid by the Landlord for this hearing. I authorize the Landlord to keep \$652.90 from the security deposit of \$840.00 in full satisfaction of the Landlords claims.

The balance of the security deposit in the amount of \$187.10 must be returned to the Tenants. I grant the Tenants a monetary order in the amount of \$187.10. This monetary order may be filed in the Provincial Court (Small Claims) and enforced as an order of that court. The Landlord is cautioned that costs of such enforcement are recoverable from the Landlord.

Conclusion

The Tenants ended the tenancy prior to the end of the fixed term tenancy agreement and left the rental unit unclean with abandoned possessions in the unit.

The Landlords claim for a loss of rent for February 2021 and March 2021 was not successful and is dismissed.

The Tenants are responsible for Landlords cleaning costs and for the cost to dispose of items that were left in the rental unit at the end of the tenancy.

The Landlord is authorized to keep \$652.90 from the \$840.00 security deposit and is ordered to return the balance of \$187.10 to the Tenants.

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: June 01, 2021

Residential Tenancy Branch