



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 was convened as a result of the Landlord's Application for Dispute Resolution. The participatory hearing was held, by teleconference, on March 14, 2022. The Landlord applied for multiple remedies, pursuant to the *Residential Tenancy Act* (the "Act").

The Landlord attended the hearing. The Tenants did not attend the hearing. The Landlord stated that she sent the Tenants each a copy of the Notice of Hearing and evidence by registered mail, on September 17, 2021, to the forwarding address provided at the end of the tenancy. Pursuant to section 89 and 90 of the Act, I find the Tenants are deemed to have received these documents on September 22, 2021, the fifth day after their mailing.

The Landlord was provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. 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 for rent or for damage or loss under the Act?
- Is the Landlord entitled to retain all or a portion of the Tenants' security deposit in partial satisfaction of the monetary order requested?
- Is the Landlord entitled to recover the cost of the filing fee?

Background and Evidence

The Landlord provided a copy of the tenancy agreement which specifies:

- monthly rent is \$1,750.00, and is due on the 15th of the month.
- the Landlord holds a security deposit of \$875.00.
- the tenancy was a fixed-term tenancy running from November 15, 2020, until November 15, 2021.

The Landlord stated that the Tenants moved out before the end of their fixed term agreement, and were unclear about when they would be vacating. The Landlord stated that it was not clear when the Tenants would be moving until the Tenants actually vacated on August 15, 2021. A move-out inspection was done that same day, and a copy of the inspection report was provided into evidence.

The Landlord is seeking the following items on her application:

- 1) \$875.00 – Rental Loss – August 15-31, 2021

The Landlord stated that the Tenants were under a fixed term tenancy, and they were very unclear about when they would be vacating the unit. The Landlord stated that the Tenants sent some text messages explaining that they had bought a house, and would “probably” be moving out by August 15, 2021. However, the Landlord stated that nothing formally was ever given in writing. The Landlord stated that she did her best to re-post the suite for rent right after getting information about the Tenants rough plans. The Landlord stated that she was able to re-rent the unit for September 1, 2021, for the same price but she lost out on rent for August 15-August 31, 2021, since the Tenants had only paid rent for July 15-August 14, 2021. As such, the Landlord is seeking this amount for half month’s rent because the Tenants were under a fixed term tenancy, and ought to be liable for this period.

- 2) \$59.42 – Paint supplies/light bulbs
- 3) \$146.44 – Flooring transition strips
- 4) \$128.47 – Paint supplies
- 5) \$107.52 – Solar Ground Lights
- 6) \$50.40 – Outdoor lights
- 7) \$126.00 – Cleaning
- 8) \$200.00 – Handyman costs

The Landlord explained that when the Tenants moved out, there were multiple deep scratches on the wall, multiple large nail holes, and several areas of drywall damage. The Landlord pointed to the condition inspection report, the photos taken at the end of the tenancy, and receipts for the above noted items. The Landlord stated that they had to patch some of the drywall, and repaint select portions of the walls where there was damage. The material costs for the painting is outlined above. The Landlord also stated that the Tenants failed to replace the burned out light bulbs before they left, and these bulbs are included in one of the painting receipts from Home Depot.

The Landlord explained that the Tenant's son ripped out all the flooring transition strips for the flooring, and played with them, causing irreparable damage. The Landlord stated these needed to be replaced, and a receipt was provided. The Landlord also provided photos of the damage.

The Landlord also stated that the Tenant's son ripped out several of the exterior landscape lights and broke them. The Landlord stated that the Tenant's son damaged two different sets of these lights, and they are itemized above, and the damage is noted in the photos and the condition report.

The Landlord also stated that the Tenants failed to clean up the house, and left behind stains on the cabinets, dirty appliances, and dirty kitchen/bathroom. The Landlord stated she had to hire a cleaner, at the above noted cost, to clean after the Tenants failed to do so.

The Landlord stated that she hired a handyman to do some of the repairs/repainting. However, she did not have any receipt for this item.

Analysis

A party that makes an application for monetary compensation against another party has the burden to prove their claim.

In this instance, the burden of proof is on the Landlord to prove the existence of the damage/loss and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the Tenants. Once that has been established, the Landlords must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the Landlord did everything possible to minimize the damage or losses that were incurred.

The Landlord is seeking the following items on her application:

- 1) \$875.00 – Rental Loss – August 2021

I have reviewed the testimony and evidence on this matter. I turn to section 45 of the Act:

Tenant's notice

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, that rent is payable under the tenancy agreement.*

First off, I do not find the Tenants gave proper Notice to End Tenancy, in writing. Further, even if the Tenants provided their Notice, in writing, at least one month before they moved out, I find they were still in breach of section 45(2)(B) because they were not in a position to legally end the fixed term on August 15, 2021, prior to the end of the fixed term (which did not expire until November 14, 2021). I find the Tenants breached this section of the Act, and I find they are liable for the rent loss from August 15-August 31, 2021. I find the Landlord sufficiently mitigated her losses for rent, as it appears the unit was re-rented quickly, and in less than a month. I award this amount, in full.

- 2) \$59.42 – Paint supplies/light bulbs
- 3) \$146.44 – Flooring transition strips
- 4) \$128.47 – Paint supplies
- 5) \$107.52 – Solar Ground Lights
- 6) \$50.40 – Outdoor lights
- 7) \$126.00 – Cleaning
- 8) \$200.00 – Handyman costs

I have reviewed the testimony and evidence on this matter. Based on the condition inspection report, the photos, the receipts, and the testimony, I find the Landlord has sufficiently demonstrated that the Tenants caused wall damage, which was beyond

reasonable wear and tear, and which required some repainting. As such, I find the Tenants are liable for the paint material cost (item 2 and 4 above). I also accept the undisputed testimony and evidence showing the Tenants failed to sufficiently clean the unit, that they damaged the flooring transition strips, and that they damaged numerous exterior landscape lights. As such, I award items #3,5,6 and 7 above.

However, since the Landlord was unable to provide any receipt as to what she paid for hiring the handyman to do some of this work, I find she has failed to sufficiently demonstrate the value of her loss. I dismiss item #8 in full.

Section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. As the Landlord was substantially successful with this application, I order the Tenants to repay the \$100.00 fee that the Landlord paid to make application for dispute resolution. Also, I authorize the Landlord to retain the security deposit to offset the other money owed.

In summary, I find the Landlord is entitled to the following monetary order:

Item	Amount
Total of items awarded	\$1,493.25
PLUS: Filing Fee	\$100.00
Subtotal:	\$1,593.25
LESS: Security Deposit	\$875.00
Total Amount	\$718.25

Conclusion

The Landlord is granted a monetary order in the amount of **\$718.25**, as specified above. This order must be served on the Tenants. If the Tenants fail to comply with this order the Landlord may file the order in the Provincial Court (Small Claims) and be 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 14, 2022