



Dispute Resolution Services

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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 landlord filed under the Residential Tenancy Act (the “Act”), for a monetary order for unpaid rent, 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 attended the hearing. As the tenant did not attend the hearing, service of the Notice of Dispute Resolution Hearing was considered.

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

The landlord testified the Application for Dispute Resolution and Notice of Hearing were sent by registered mail on October 26, 2021, and successfully delivered to the tenant on October 29, 2021. A Canada Post tracking number was provided as evidence of service. I find the tenant has been served in accordance with the Act.

The landlord 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.

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 unpaid rent and 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 August 14, 2020 and was to expire on August 31, 2021. Rent in the amount of \$1,500.00 was payable on the first of each month and under a separate agreement the tenant was to pay \$100.00 for parking on a month-to-month basis. The tenant paid a security deposit of \$750.00.

On May 20, 2021, the tenant signed a lease renewal addendum extending the lease for an additional 14 months. The tenancy ended on October 12, 2021.

A move-in and move-out condition inspection report was completed.

The landlord claims as follows:

a.	Unpaid rent for October 2021 & NSF fee	\$1,625.00
b.	Loss of rent for November 2021	\$1,600.00
c.	Cleaning and faucet repair	\$ 285.00
d.	Filing fee	\$ 100.00
	Total claimed	\$3,610.00

The landlord testified that the tenants pre-authorized debit payment for October 2021 rent and parking was returned due to insufficient funds. The landlord seeks to recover the cost of October rent, October parking and the NSF for a total amount of \$1,625.00.

The landlord testified that on September 13, 2021, the tenant gave notice to end their tenancy effective October 31, 2021. The landlord stated that they reminded the tenant that they were under a fixed term and cannot terminate the tenancy prior to the end of that agreement. The landlord stated they were unable to re-rent the premise until December 1, 2021. The landlord seeks to recover loss of rent for November 2021, in the amount of \$1,600.00.

The landlord testified that the flooring had some staining from hair dye which required scrubbing and the tenant could not provide proof the carpets had been cleaned. The landlord stated that they seek to recover the cost of \$200.00, as they had to clean the carpets and the amount agreed for this service was in their addendum to their tenancy agreement. The landlord stated that the kitchen faucet was broken and had to be repaired and cost \$85.00 to repair. The landlord seeks to recover the total cost of \$285.00.

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.

Rules about payment and non-payment of rent

26 (1) A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations, or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

...

In this case the tenants preauthorized debt payment for rent and parking for October 2021, were returned due to insufficient funds. The tenant did not pay the outstanding rent, parking or the charge for insufficient funds. I find the tenant breached section 26 of the Act, when they failed to pay rent and parking for October 2021. Therefore, I find the landlord is entitled to recover \$1,500.00 for rent, \$100.00 for parking, \$25.00 for the NSF fee for the total amount of **\$1,625.00**.

Tenant's notice (fixed term)

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,

...

In this case, the evidence of the landlord was that the tenant breached the fixed term tenancy by providing notice to end the tenancy on September 13, 2021, effective October 31, 2021, as under the renewal agreement they could not end the tenancy until October 31, 2022. The evidence of the landlord was that they were unable to find a new renter until December 1, 2021.

Since the tenant failed to comply with the Act and their tenancy agreement by ending their tenancy earlier than the Act, allows. The landlord is entitled to an amount sufficient to put the landlord in the same position as if the tenant had not breached the Act. This includes compensating the landlord for any loss of rent up to the earliest time that the tenant could have legally ended the tenancy. Therefore, I find the landlord is entitled to recover loss of rent for November 2021 in the amount of **\$1,500.00**.

However, I have not granted the parking fee of \$100.00 as this is a separate month-to-month agreement and the tenant had the right to cancel that agreement before the fixed term tenancy expired.

Leaving the rental unit at the end of a tenancy

37 (2) When a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.

Normal wear and tear does not constitute damage. Normal wear and tear refers to the natural deterioration of an item due to reasonable use and the aging process. A tenant is responsible for damage they may cause by their actions or neglect including actions of their guests or pets.

I accept the undisputed testimony of the landlord that the floor had hair dye stains, and the carpet had to be cleaned because the tenant was unable to provide proof the carpets were cleaned as required, and the kitchen faucet was broken. This is supported by the move-out condition inspection report signed by the tenant. Therefore, I find the landlord is entitled to recover the cost of **\$285.00**.

I find that the landlord has established a total monetary claim of **\$3,510.00** 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 **\$750.00** in partial satisfaction of the claim and I grant the landlord an order under section 67 of the Act for the balance due of **\$2,760.00**.

This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court. The **tenant is cautioned** that costs of such enforcement are recoverable from the tenant.

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: May 05, 2022

Residential Tenancy Branch