



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 and loss of rent, for damages to the unit and 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 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’s agents testified the Application for Dispute Resolution and Notice of Hearing were sent by registered mail on March 29, 2022, to the address the tenant provided as their forwarding address. A Canada post tracking number was provided as evidence of service. The landlord’s agents stated that the tenant did not pickup the package as it was 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 tenant has been duly served in accordance with the Act. Refusal or neglect to pickup the package does not override the deemed served provision of the Act.

The landlords’ agents appeared 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?

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 tenancy began on November 1, 2019. Rent in the amount of \$2,000.0 was payable on the first of each month. The tenant paid a security deposit of \$1,000.00. The tenancy ended on November 8, 2021.

At the outset of the hearing the landlord withdrew their claim for damages to the carpet as they forgot to submit evidence in support of this claim.

The landlord claims as follows:

| | | |
|----|------------------------------|--------------------|
| a. | Unpaid rent and loss of rent | \$ 3,290.32 |
| b. | Unpaid parking and NSF fee | \$ 120.00 |
| c. | Hauling fees, | \$ 543.69 |
| d. | Cleaning | \$ 360.00 |
| e. | Carpet cleaning | \$ 199.50 |
| f. | Painting | \$ 120.00 |
| g. | Repairs | \$ 388.43 |
| h. | Key replacement | \$ 18.83 |
| i. | Filing fee | \$ 100.00 |
| | Total claimed | \$ 5,140.77 |

Unpaid rent and loss of rent

The landlord's agent testified that the tenant did not pay rent for November 2021, and gave notice to end their tenancy on November 8, 2021, to end the tenancy on the same date. The agent stated that because the tenant failed to give the required notice to end the tenancy pursuant to section 45 of the Act, they were unable find a new renter for December 1, 2021. The landlord stated they took reasonable steps to find a new renter and their tenancy commenced on December 21, 2022. The landlord seek to

recover unpaid rent for November 2021 in the amount of \$2,000.00 and loss of prorated rent for December 2021 in the amount of \$1,290.32. The landlord seeks to recover the amount of \$3,290.32.

Unpaid parking and NSF fees

The landlord's agent testified that the tenant was pay parking fees for September and October 2021, in the total amount of \$60.00 and those payments were returned for insufficient funds , and they incurred bank service charges for each of these months totaling \$40.00. The agent stated that they also incurred a bank service fee for November 2021 for the tenants rent returning for insufficient funds. The landlord seeks to recover parking fee of \$60.00 and bank service charges of \$60.00 for the total amount of \$120.00.

Hauling fees

The landlord's agent testified that the tenant abandoned the rental unit. The landlord stated that the tenant wanted them to remove and dispose of the remaining items. The landlord stated that they had to pay to have the tenant's items removed and dispose. The landlord seeks to recover the cost of \$543.69. Filed in evidence is an email from the tenant instructing the landlord to remove and dispose the remaining items. Filed in evidence are photographs and a receipt.

Cleaning fees

The landlord's agent testified that the tenant did not clean the rental unit. The landlord stated that it took their staff 12 hours, and they are paid at the rate of \$30.00 per hours. The landlord seeks to recover cleaning cost in the amount of \$360.00. Filed in evidence are photographs showing the rental unit was not cleaned.

Carpet cleaning

The landlord's agent testified that they had to pay to have the carpets cleaned in the three bedrooms and living room. The landlord seeks to recover the cost of \$199.50. Filed in evidence is a receipt.

Painting

The landlord's agent testified that they had to do touch up painting to the entry wall and trim and the same in the living room and second bathroom due to water damage. The agent stated that this was not normal wear and tear. The landlord stated they had to pay their staff 4 hours at the rate of \$30.00 per hours. The landlord seeks recover the cost of \$120.00.

Repairs

The landlord's agent testified that the sink in the bathroom was cracked and had to be replaced. The landlord stated that this was a new building that was purchased in 2019 and this was damage caused by neglect. The agent stated they had to buy a new sink. The landlord seeks to recover the cost of \$110.18. Filed in evidence is a photograph of the cracked sink and a receipt for replacement.

The landlord's agent testified that they also had to replace the bathroom pocket door as the door was broken as it appears the tenant had hung something heaving pulling down the trim. The landlord seeks to recover the cost of \$278.25.

Key Replacement

The landlord's agent testified that the tenant did not return the keys or the fob to the rental unit. The landlord stated they forgot to claim the cost of the fob. The landlord seeks to recover the cost to replace the keys in the amount of \$18.83. Filed in evidence is a receipt and emails between the parties.

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.

Unpaid rent and loss of rent

Rules about payment and non-payment of rent are defined in Part 2 of the Act.

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.

...

I accept the evidence of the landlord's agent that the tenant failed to pay rent for November 2021. I find the tenant breached section 26 of the Act. Therefore, I find the landlord is entitled recover unpaid rent for November 2021, in the amount of **\$2,000.00**.

Tenant's notice (month-to-month)

45 (1) A tenant may end a periodic 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, and

(b) 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

...

I accept the evidence of the landlord's agent that the tenant failed to give the landlord proper notice to end the tenancy. The tenant ended the tenancy on November 8, 2022, by giving notice on the same date. I find the tenant breached section 45 of the Act.

Since the tenant failed to comply with the Act by not given the landlord sufficient notice to end the tenancy. 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, which in this case would be December 31, 2021.

However, under section 7(2) of the Act, the party who claims compensation for loss that results from the non-complying party must do whatever is reasonable to minimize the loss.

The duty to minimize the loss begins when the party entitled to claim damages becomes aware that damages are occurring. Failure to take the appropriate steps to minimize the loss will have an effect on a monetary claim, where the party who claims compensation can substantiate such a claim.

In this case, the evidence of the landlord agent was that they found a new renter and their tenancy commenced on December 21, 2021, I find the landlord made reasonable efforts to minimize the loss. Therefore, I find the landlord is entitled to recover unpaid rent in the amount of **\$1,290.32.**

Unpaid parking and NSF fees

I accept the evidence of the landlord's agent that the tenant was to pay \$30.00 per month for parking. Parking in not included in the rent. The tenant's parking fee were returned to the landlord resulting in service charges to the landlord. Therefore, I find the landlord is entitled to recover unpaid parking fee and service fee in the total amount of **\$100.00.**

I accept the evidence of the landlord that the tenants rent for November 2022 was not negotiable resulting in a service fee for the landlord. Therefore, I find the landlord is entitled to recover the bank charge of **\$20.00.**

Damages

How to leave the rental unit at the end of the tenancy is defined in Part 2 of the Act.

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.

Hauling fees

I accept the evidence of the landlord's agent that the tenant did not removal all their belongings from the rental unit and the landlord was required to remove and have the items hauled away. This is supported by photographs and emails. I find the tenant breached the Act when they failed to give vacant possession to the landlord. I find the landlord is entitled to recover the cost of having the tenant's belongings removed and dispose in the total amount of **\$543.69**

Cleaning fees

I accept the evidence of the landlord's agent that the tenant made no attempt to clean the rental unit. This is supported by the landlord's photographs. I find the tenant breached the Act when they failed to reasonably clean the rental unit. Therefore, I find the landlord is entitled to recover cleaning costs in the amount of **\$360.00**.

Carpet cleaning

I accept the evidence of the landlord that the tenant did not have the carpets cleaned at the end of the tenancy.

Under the Residential Tenancy Policy Guideline 1, which clarifies the rights and responsibilities of the parties for the premises under the Act, the tenant is generally expected to clean the carpets if vacating after a tenancy of one year.

As the tenant resided at the property for approximately two years, I find the tenant was responsible to have the carpets cleaned at the end of the tenancy. I find the tenant breached the Act when they failed to have the carpets cleaned. Therefore, I find the landlord is entitled to recover the carpet cleaning in the amount of **\$199.50**.

Painting

I accept the undisputed evidence of the landlord that they had to touch up the paint in areas of the rental unit that was above normal wear and tear. Therefore, I find the landlord is entitled to recover the cost of **\$120.00**.

Repairs

I accept the evidence of the landlord's agent the bathroom sink was crack. This is not normal wear and tear. Therefore, I find the landlord is entitled to recover the cost of the sink in the amount of **\$110.18**.

I accept the evidence of the landlord that the bathroom door was broken, and the trim pulled down from a heavy object. This is supported by the photographs as the tenant had installed what appears to be curtain, to replace the door. I find the tenant breached the Act when they failed to repair the damage door and trim. Therefore, I find the landlord is entitled to recover the cost of **\$278.25**.

Key Replacement

At the end of the tenancy the tenant is expected to return all key that give access to the rental unit. The evidence of the landlord was the tenant did not return the key. This is supported by the emails. Therefore, I find the landlord is entitled to recover the cost to replace the keys in the amount of **\$18.83**.

I find that the landlord has established a total monetary claim of **\$5,140.77** 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 **\$1,000.00** in partial satisfaction of the claim and I grant the landlord an order under section 67 of the Act for the balance due of **\$4,140.77**.

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: November 23, 2022

Residential Tenancy Branch