



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MND, MNDCL, MNSD, FFL

Introduction

On December 19, 2022, the Landlord submitted an Application for Dispute Resolution under the *Residential Tenancy Act* (“the Act”) seeking money owed or compensation for damage or loss; a monetary order for unpaid rent; a monetary order for damage or repairs; and to keep a security deposit and pet damage deposit.

The matter was set for a conference call hearing. The Landlord and Tenants attended the teleconference hearing. The Landlord was assisted by her agent. At the start of the hearing, I introduced myself and the participants. The hearing process was explained. The Landlord's evidence was confirmed received by the Tenant. The Tenants did not submit any documentary evidence. The parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to present affirmed oral testimony and to make submissions during the hearing. The parties were informed that recording the hearing is not permitted.

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 unpaid rent?
- Is the Landlord entitled to a monetary order for damage or repair costs?
- Is the Landlord entitled to other compensation for damage or loss?
- Can the Landlord keep the security deposit and pet damage deposit towards their claims?
- Is the Landlord entitled to recover the cost of the filing fee?

Background and Evidence

The Landlord's agent ("the Landlord") and the Tenants testified that the tenancy began on August 1, 2022, as a one-year fixed term tenancy. Rent in the amount of \$2,400.00 was to be paid to the Landlord by the first day of each month. The Tenants paid the Landlord a security deposit of \$1,200.00 and a pet damage deposit of \$1,200.00. The Landlord provided a copy of the tenancy agreement.

The Landlord testified that the Tenants broke the fixed term tenancy agreement by moving out of the rental unit on December 31, 2022, prior to the end of the fixed term agreement.

The Landlords application provides that the Landlord is seeking compensation as follows:

Unpaid December 2022 Rent	\$2,400.00
Cleaning/ damage to the rental unit	\$2,400.00
Money owed or compensation for damage or loss	\$7,993.50
Filing fee	\$100.00

Unpaid Rent

The Landlord testified that the Tenants failed to pay the rent owing under the tenancy agreement for the month of December 2022. The Landlord is seeking compensation of \$2,400.00.

In reply, the Tenants agreed that they failed to pay December 2022 rent.

Bylaw Fine

The Landlord testified that the Tenants are responsible to pay strata bylaw fines due to their failure to notify the strata and arrange use of the elevator to move out. The Landlord testified that the Tenants signed a Form K agreeing to the strata rules. The Landlord testified that the Tenants used the elevator on three occasions and the Landlord was fined a total amount of \$300.00. The Landlord testified that she paid the \$300.00 fine. The Landlord provided a copy of the Form K and the strata invoice.

In reply, the Tenants acknowledged that they signed Form K and they accepted responsibility for this \$300.00 claim.

Cleaning and Repairs

The Landlord testified that the Tenants had a pet, and they left the rental unit unclean. The Landlord stated that there was dog hair in the unit and the stove/oven and refrigerator were not clean. The Landlord stated that they hired a company to clean the rental unit on December 19, 2022 at a cost of \$300.00. The Landlord provided a copy of the cleaning invoice. The Landlord provided photographs of the rental unit taken at the end of the tenancy. The Landlord stated that they are not making a claim for repairs at this time as the repairs are ongoing.

In reply, the Tenant testified that at the move out inspection, his father was present as his agent and the Landlord only mentioned that the stove was not clean. The Tenant testified that he had spent two days cleaning the rental unit and the Landlord is trying to take advantage of them. He stated that the Landlord was offered \$100.00 for the cost to clean the stove but declined the offer. He stated that the Landlord emailed his father a copy of the move out report.

The Landlord was asked whether he completed a move out condition inspection report at the end of the tenancy and he replied that it was not completed. The move out inspection had not been arranged yet by the Landlord and the parties present in the unit agreed to the move out inspection as they were both present at the unit. The Landlord provided a copy of an incomplete condition inspection report. The move out portions are incomplete except for page 5 that notes there is damage to walls that need painting and the stove needs cleaning. The condition inspection report is not signed by the Landlord or Tenant's agent.

Money Owed or Compensation for Damage or Loss

The Landlord withdrew his claim to recover a strata fine related to the Tenants' dog since the Landlord was not fined. The Landlord withdrew a claim for cleaning costs as it was a duplicate claim already addressed earlier in this decision.

The Landlord is seeking to compensation for a loss of rent for the months of January 2023 and February 2023 in the amount of \$4,800.00. The Landlord is seeking to recover management fees of \$2,493.50.

Loss of Rent

The Landlord was informed that his claim for February 2023 rent is premature and is dismissed with leave to reapply.

The Landlord is seeking compensation for a loss of January 2023, rent under the tenancy agreement. The Landlord testified that the rental unit has yet to be rented out. He testified that he placed advertisements on local websites as of December 7, 2022, listing the unit for rent at \$2,800.00 per month. The Landlord testified that he increased the rent based on his market research for comparable units. He testified that he has conducted showings, but nobody has rented the unit.

In reply, the Tenant testified that there were many applicants when they rented the unit four months earlier. He stated that the Landlord raised the rent to \$2,800.00 which is a 20% increase in the rent. He submitted that the Landlord has a duty to mitigate against the loss and has failed to do so by raising the rent to \$2800.00.

Management Fees

The Landlord provided a copy of an invoice dated December 19, 2022, in the amount of \$2,593.50 for the costs of meeting with the Landlord; showing the unit to potential tenants; compensation for driving time; and for submitting documents for this hearing. The Landlord testified that they charge the Landlord for extra services above the fee she pays for them to manage the rental unit. He testified that they charge \$95.00 per hour for preparing documents, mailing documents, filing an application, and attending the hearing.

The Landlord provided testimony acknowledging that the Tenants did not sign an agreement to pay the cost of management fees if they ended the tenancy early. The Landlord acknowledged that the tenancy agreement does not contain a liquidated damages provision specifying a monetary amount if the Tenants moved out early.

In reply, the Tenant stated that it was a huge shock to him that the Landlord was trying to claim management fees. He confirmed that there was no agreement for them to pay management fees.

Security Deposit and Pet Damage Deposit

The Landlord applied against the security deposit and pet damage deposit on December 19, 2022. The Landlord is seeking to keep the deposits of \$2,400.00 in partial satisfaction of her monetary claims.

Analysis

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

Unpaid December 2022 Rent

I accept the Landlord's testimony that the Tenants failed to pay the rent owing under the tenancy agreement for the month of December 2022. I award the Landlord \$2,400.00 for unpaid December 2022 rent.

Loss of Rent

I find that the Landlord advertised the rental unit in a timely manner; however, by increasing the monthly rent from \$2,400.00 to \$2,800.00 per month the Landlord did not take reasonable steps to minimize the loss. It is reasonable to accept that it could take much more time to rent the unit out at \$2,800.00 per month. It is reasonable to accept that the Landlord may have been able to rent the unit out if it had been advertised at \$2,400.00 per month. The Landlord's claim for a loss of \$2,400.00 rent for January 2023 is dismissed without leave to reapply.

Bylaw Fine

I find that the Tenants are responsible to repay the \$300.00 fine that the Landlord paid for the strata rule violations related to the elevator. I award the Landlord the amount of \$300.00.

Cleaning and Repairs

The Landlord failed to complete a move out condition inspection report with the Tenants agent. While I acknowledge that the parties agreed to the inspection without any notice, the Landlord has obligation under section 35 of the Act to fully complete a move out condition inspection report with the Tenant or his agent. I find that the move out report is incomplete and is not reliable evidence as to the condition or repair of the unit at the end of the tenancy.

The Landlord provided 24 photographs taken at the end of the tenancy showing the cleanliness of the rental unit. I find that the Tenants left some areas of the rental unit

unclean. I find that the Landlords claim for \$300.00 for cleaning costs is reasonable. I award the Landlord \$300.00 for cleaning costs.

Management Fees

I find that the Landlord hired a property management firm to deal with the tenancy and these costs for preparing documents, sending mail, applying for dispute resolution, and attending a hearing are not recoverable against the Tenants. These are costs associated with doing business as a landlord. Further to this there was no liquidated damages clause in the tenancy agreement requiring the Tenants to pay specific compensation to the Landlord if they ended the tenancy early.

The Landlords claim for management fees is dismissed without leave to reapply.

Security Deposit and Pet Damage Deposit

The Landlord breached section 35 of the Act by failing to complete a move out condition inspection form with the Tenant. In accordance with section 36 of the Act the Landlord's right to claim against the security deposit is extinguished.

However, section 72 of the Act provides that if I order a party to a dispute resolution proceeding to pay any amount to the other, the amount may be deducted in the case of payment from a tenant to a landlord, from any security deposit or pet damage deposit due to the tenant.

The security deposit and pet damage deposit amounting to \$2,400.00 will apply to any monetary awards that I have granted to the Landlord.

Section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. The Landlord had some success in this hearing. 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 \$3,100.00 comprised of \$2,400.00 for unpaid rent; \$300.00 for fines; \$300.00 for cleaning; and the \$100.00 fee paid by the Landlord for this hearing. After setting the deposits of \$2,400.00 towards the award of \$3,100.00 I find that the Landlord is entitled to a monetary order in the amount of \$700.00. This monetary 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 Tenants ended the fixed term tenancy early. The Tenants are responsible to compensate the Landlord for unpaid December 2022 rent and for fines and cleaning costs.

The Landlord has established a monetary claim in the amount of \$3,100.00. I order that the Landlord can keep the security deposit and pet damage deposit in the amount of \$2,400.00 in partial satisfaction of the Landlords awards. The Tenants owe the Landlord a balance of \$700.00.

I grant the Landlord a monetary order in the amount of \$700.00.

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: January 18, 2023

Residential Tenancy Branch