



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MNSD, FF

Introduction

This hearing was convened in response to applications by the landlord and the tenants.

The landlord's application is seeking orders as follows:

1. For a monetary order for unpaid rent;
2. To keep all or part of the security deposit and pet damage deposit (the "Deposits"); and
3. To recover the cost of filing the application.

The tenants' application is seeking orders as follows:

1. Return all or part of the Deposits; and
2. To recover the cost of filing the application.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and make submissions at the hearing.

The parties confirmed receipt of all evidence submissions and there were no disputes in relation to review of the evidence submissions.

During the hearing the landlord withdrew their claim for NSF fees and the cost of the repair to the toilet. Therefore, I dismiss this portion of the landlord's claim without leave to reapply.

Issues to be Decided

Is the landlord entitled to a monetary order for unpaid rent?

Is the landlord entitled to keep the Deposits in partial satisfaction of their claim?

Are the tenants entitled to the return of their Deposits?

Background and Evidence

The tenancy began on March 23, 2020. Current rent in the amount of \$1,679.82 was payable on the first of each month. A security deposit of \$827.50 and a pet damage deposit of \$827.50 were paid by the tenants.

The landlord testified that the tenants' failed to pay rent for March and April 2022 and were served with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities on April 13, 2022, which required the tenants to vacate the rental unit on April 23, 2022. The landlord stated that the tenant's vacated the rental unit; however, they failed to pay the rent owed. The landlord seeks to recover the cost of \$3,359.64.

The tenant acknowledged they did not pay any rent for March or April 2022. The tenant stated that they were confused when they received the Notice as the landlord had include April 2022, rent when it was not due until 15th as they had a temporary agreement with the landlord that the rent would be paid on the 15th vs the 1st. The tenant stated they verbally told the landlord to keep the Deposits for March 2022, rent. The tenant stated they were out of the rental before April 15, 2022, therefore rent was not owed as it was not due.

The landlord testified that the tenants left furniture items behind in the rental unit and they had to pay to have them removed. The landlord seeks to recover the cost of \$456.75.

The tenant testified that they came back to the rental unit on May 23, 2022, to retrieve the rest of their belongings; however, the landlord's agent refused to let them in. The tenant stated that they had accidentally left the key to the rental unit on the counter on the evening of May 22, 2022, because they were upset as they were being threatened by another tenant.

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.

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.

In this case the tenant's filed an application for the return of their Deposits. However, the landlord made a claim against the Deposits within 15 days after the tenancy ended claiming other relief than damages. I find it was unnecessary for the tenants to file their application as I must deal with the Deposits through the landlord's application.

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.*

...

The evidence of the landlord was the tenants did not pay rent owed for March and April 2022. The tenant acknowledged they did not pay rent any rent for March 2022. The tenant states that rent was due on the 15th; however, that was a temporary agreement to change the payment date only for the benefit of the tenants. The tenancy agreement the tenancy runs from the 1st of each month to the last day. This means rent owed was occurring regardless of the deferred the payment plan. The temporary agreement, did not change the period to which the tenancy runs.

Furthermore, clearly by the evidence of the tenants they remained in possession of the rental unit until April 22, 2022, which is what they wrote in their application and when they took pictures of the condition of the rental unit and photographs showing the keys that gave access to the rental unit were left upon the counter.

I find the tenants have breached section 26 of the Act when they failed to pay rent for March and April 2022, when due under the tenancy agreement and this has caused losses to the landlord. Therefore, I find the landlord is entitled to recover unpaid rent in the amount of **\$3,359.64**

In this case, the landlord paid to have some furniture items removed and disposed that were left behind by the tenants. The tenant alleged they returned to the rental unit on April 23, 2022; however, were denied access by the landlord's agent.

I do not accept the tenant's evidence that they forgot their keys on the counter because they were upset. I find that does not have the ring of truth, the tenant took photographs of the rental unit on April 22, 2022, to prove the condition of the rental unit and photographs to prove they left the mail key and door fobs on the counter. I find it is unreasonable that the tenants would be taking photographs of the keys to prove they were left behind on the counter, if the tenants intended to use those key to return to the rental unit the next day.

Further the tenants sent an email to the landlord on May 6, 2022, informing the landlord they had moved out on April 22, 2022, and about the incident with the other tenant on April 22, 2022; the email also show the tenants left the rental unit unsecure for management entry, which is irresponsible, as the tenants could be liable for damages if something should have occurred.

Furthermore, nowhere in the May 6, 2022, email does the tenant inform the landlord that they came back to the rental unit on April 23, 2022 and were denied access by the landlord's property manager to pickup the remaining items or asks the if they could be retrieved. I find it more likely than not that the tenants had no intentions of removing these items from the rental unit.

I find the tenant's breach the Act, when they failed to remove the freezer and bed frame from the rental unit, and this caused losses to the landlord. Therefore, I find the landlord is entitled to recover the reduced amount in the invoice in the amount of **\$456.75**

I find that the landlord as established a total monetary claim of **\$3,916.39** comprised of the above described amounts and the \$100.00 fee paid for this application.

I order that the landlord retain the Deposits in partial satisfaction of the claim and I grant the landlord an order under section 67 of the Act for the balance due of **\$2,261.39**.

This 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.

As I have found the landlord is entitled to keep the Deposits. I dismiss the tenants' application. The tenants are not entitled to recover the cost of the filing fee.

Conclusion

The landlord is granted a monetary order and may keep the Deposits in partial satisfaction of the claim and the landlord is granted a formal order for the balance due.

The tenants' application is dismissed.

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 25, 2022

Residential Tenancy Branch