



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding NACEL PROPERTIES LTD
and [tenant name suppressed to protect privacy]

DECISION

Code MNR, MND, MNSD, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord for a monetary order for unpaid rent, for damages to the unit and an order to retain the security deposit in partial satisfaction of the claim.

The landlord's agent attended the hearing. As the respondents did not attend the hearing, service of the Notice of a Dispute Resolution Hearing was considered.

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

The landlord's agent testified the Application for Dispute Resolution and Notice of Hearing were sent by registered mail sent on March 12, 2013, Canada post tracking numbers were provided as evidence of service. The agent stated the Canada post history report indicates the packages were successfully delivered on March 18, 2013, the respondents did not appear. I find that the respondents have been duly served in accordance with the Act.

Preliminary Issue

At the outset of the hearing the tenancy agreement was reviewed. On the agreement it lists the respondent (IA) as an occupant of the rental unit and not a tenant. The landlord's agent agreed after the agreement was reviewed that the respondent (IA) is an occupant. As a result, I find the respondent (IA) has no legal rights or obligations under the tenancy agreement or the Act. The landlord's application was amended to remove (IA) from the style of cause. This hearing proceeded against the tenant (AS).

The landlord's agent appeared gave testimony and was provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

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 parties entered into a fixed term tenancy which began on September 15, 2009 and was to expire on September 30, 2010. The tenancy continued thereafter on a month to month basis. Rent in the amount of \$1,450.00 was payable on the first of each month. A security deposit of \$725.00 was paid by the tenant. Filed in evidence is a copy of the tenancy agreement.

The landlord testified a move-in and move-out condition inspection report was completed. Filed in evidence is a copy of the report signed by the parties.

The landlord claims as follows:

a.	Loss of rent for March 2013	\$1,450.00
b.	Carpet cleaning	\$ 140.00
c.	Cleaning rental unit	\$ 134.40
d.	Filing fee	\$ 50.00
	Total claimed	\$1,775.40

The landlord's agent testified on February 8, 2013, they received a letter from the tenant that they would be vacated the premises by March 1, 2013. The agent stated the tenant did not give sufficient notice to end the tenancy. Filed in evidence is a letter dated February 6, 2013, from the tenant.

The landlord's agent testified they immediately started to advertise the rental unit on a local popular website and they also placed an advertisement in the local newspaper. The agent stated on February 26, 2013, they found a new tenant and the tenancy commenced on April 1, 2013. The landlord seeks to recover loss of rent for March 2013, in the amount of \$1,450.00.

The landlord's agent testified the tenant did not clean the carpet at the end of the tenancy and that this is noted in the move-out conditional inspection report. The agent stated they paid to have the carpet cleaned and seek to recover the cost in the amount of \$140.00. Filed in evidence is a receipt for carpet cleaning.

The landlord's agent testified the tenant made no effort to clean the unit or any of the appliances at the end of the tenancy and that this is noted in the move-out conditional inspection report. The agent stated they paid to have the unit cleaned and seek to

recover the cost in the amount of \$134.40. Filed in evidence is a receipt for cleaning the unit.

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.

To prove a loss and have one party pay for the loss requires the claiming party to prove four different elements:

- Proof that the damage or loss exists;
- Proof that the damage or loss occurred due to the actions or neglect of the Respondent in violation of the Act or agreement;
- Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
- Proof that the Applicant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

Where the claiming party has not met each of the four elements, the burden of proof has not been met and the claim fails. In this case, the landlord has the burden of proof to prove their claim.

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.

Section 45 of the Residential Tenancy Act states:

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

In this case, the evidence of the landlord's agent was the tenant did not give notice until February 8, 2013 to end the tenancy on March 1, 2013. Under section 45(1) of the Act the tenant was required to provide the landlord with at least one month notice to end the tenancy. I find that the tenant has breached the Act as the earliest date they could have legally ended the tenancy was March 31, 2013.

As a result of the tenant not complying with the terms of the tenancy agreement or the Act the landlord suffered a loss of rent for March 2013, the landlord is entitled to an amount sufficient to put the landlord in the same position as if the tenant had not breached the tenancy agreement or 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.

However, under Section 7 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.

In this case, the evidence of the landlord's agent was that they immediately advertised the unit on a local popular website and they placed an advertisement in the local newspaper. The evidence was on February 26, 2013, they found a new tenant and the tenancy commenced on April 1, 2013. As a result, I find the landlord made reasonable efforts to minimize the loss. Therefore, I find the landlord is entitled to recover loss of rent for the month of March 2013, in the amount of **\$1,450.00**.

Section 37 of the Residential Tenancy Act states:

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.

Under the Residential 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 carpet if the tenancy exceeded one year.

In this case, the tenancy exceeded one year and the evidence was that the tenant did not clean the carpet at the end of tenancy as required by the Act. This is supported by the move-out condition inspection report. As a result, I find the tenant has breached section 37 of the Act, when they failed to clean the carpet. Therefore, I find the landlord is entitled to compensation for the cost of having the carpet cleaned in the amount of **\$140.00**.

The evidence was the tenant made no effort to clean the rental unit. This is supported by the move-out condition inspection report. As a result, I find the tenant has breached section 37 of the Act, when they failed to leave the rental unit reasonably clean. Therefore, I find the landlord is entitled to compensation for the cost of having the rental unit cleaned in the amount of **\$134.40**.

I find that the landlord has established a total monetary claim of **\$1,774.40** comprised of the above described amounts and the \$50.00 fee paid for this application.

I order that the landlord retain the deposit of **\$725.00** in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of **\$1,049.40**.

This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

Conclusion

The landlord is granted a monetary 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: June 04, 2013

Residential Tenancy Branch

