



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND MNR MNSD MNDC FF

Introduction

This hearing was convened as a result of the landlord's application for dispute resolution seeking remedy under the *Residential Tenancy Act* (the "*Act*"). The landlord applied for a monetary order for unpaid rent or utilities, for damage to the unit, site or property, for authorization to keep all or part of the tenants' security deposit, for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and to recover the filing fee.

The landlord appeared at the teleconference hearing and gave affirmed testimony. During the hearing the landlord was given the opportunity to provide his evidence orally. A summary of the evidence is provided below and includes only that which is relevant to the hearing.

As the tenants did not attend the hearing, service of the Notice of a Dispute Resolution Hearing (the "Notice of Hearing") was considered. The landlord testified that the Notice of Hearing and evidence was served on the tenants by registered mail on August 18, 2013. The landlord provided three registered mail tracking numbers in evidence and confirmed that the names and addresses matched the names of the three respondent tenants and address of the forwarding address provided by the tenants as their forwarding address. Documents sent by registered mail are deemed served five days after mailing under section 90 the *Act*. As a result, I find that all three tenants were deemed served as of August 23, 2013.

Preliminary and Procedural Matter

At the outset of the hearing, the landlord indicated that he was reducing his monetary claim from the original amount being claimed of \$2,053.32 to \$2,037.05. I find that a reduction in the landlord's monetary claim does not prejudice the tenants, and as a result, the landlord was permitted to reduce his monetary claim during the hearing.

Issues to be Decided

- Is the landlord entitled to a monetary order under the *Act*, and if so, in what amount?
- What should happen to the tenants' security deposit under the *Act*?

Background and Evidence

The landlord submitted a copy of the tenancy agreement in evidence. A six month fixed term tenancy began on November 1, 2012 and was to revert to a month to month tenancy agreement as of May 1, 2013. According to the landlord and the written tenancy agreement, monthly rent of \$1,000.00 was due on the first day of each month, plus \$100.00 to be collected with rent each month "to go towards electricity" as electricity was not included in the tenancy agreement.

The landlord's monetary claim is comprised of the following:

Item 1. Unpaid electrical utilities	\$424.76
Item 2. Late move out/ loss of rent for August 1-6, 2013	\$100.00
Item 3. Repair costs	\$597.29
Item 4. Cleaning costs	\$915.00
TOTAL	\$2,037.05

Regarding the landlord's first item being claimed, the landlord provided a detailed accounting of how he arrived at the amount of \$424.76 owing by the tenants, which included the amounts owing for the months as follows:

- November 2012 \$20.17 owing
- December 2012 \$68.60 owing
- January 2013 \$60.95 owing
- February 2013 \$30.86 owing
- March 2013 \$43.46 owing
- April 2013 \$36.36 owing
- May 2013 \$19.87 owing
- June 2013 \$73.29 owing
- July 2013 \$66.24 owing
- August 2013 \$4.96 owing

Regarding the landlord's second item being claimed, the landlord testified that the tenants did not vacate the rental unit until August 3, 2013 which delayed new renters from being able to move into the rental unit until August 7, 2013, due to the condition the rental unit was left in by the tenants, and the cleaning and repairs that were required. The landlord stated that he is only seeking \$100.00 in compensation for loss of August 2013 rent as that was the amount of the shortfall in rent received for the month of August 2013 including what was received by the new renters.

Regarding the third item being claimed by the landlord, the landlord has claimed \$597.29 for repair costs as a result of damage to the rental unit caused by the tenants. The landlord submitted the incoming and outgoing condition inspection report in evidence. Everything in the outgoing condition inspection report is marked with a "G" to represent good condition except "treads and landings" which are marked as damaged at the start and the end of the tenancy. The following six items were marked with a "G" and "DT" to represent good condition and "dirty" condition:

1. Entry floor carpet
2. Kitchen countertop
3. Living room floor/carpet
4. M. Dining Room floor/carpet
5. Master bedroom floor/carpet
6. Bedroom 2 floor/carpet (marked as damaged in incoming inspection)

In the condition inspection report, it is written "suite has not been cleaned yet" as the outgoing inspection was done on July 31, 2013 and the tenants did not vacate until August 3, 2013. The landlord stated that his father was the one to complete the condition inspection report and marked the items as "good" as he was "just happy to see the tenants move out".

The landlord testified that it took seven trips to the dump to dispose of the junk left behind in the rental unit by the tenants at the end of the tenancy. The landlord also submitted photos in evidence and receipts in support of some of the items being claimed.

Regarding the fourth item being claimed by the landlord, the landlord has claimed \$915.00 for cleaning costs related to cleaning the rental unit. The landlord testified that it took a total of 30.5 hours to clean the rental unit which included the disposal of garbage left behind by the tenants. The landlord testified that the photos submitted in evidence support the condition of the rental unit after the tenants vacated, which had to be cleaned prior to the new tenants moving in.

The landlord stated that floors had to be washed two or three times in places, carpets had to be cleaned, cat litter was everywhere and had to be cleaned up, food was just left behind and had to be cleaned up, and the walls had to be cleaned as the tenants had been smoking in the rental unit. The landlord stated that he arrived at the amount of \$915.00 by charging \$30.00 per hour for the 30.5 hours, which was a combined total of three people cleaning the rental unit.

The landlord submitted his application claiming towards the tenants' security deposit on August 14, 2013. The landlord submitted a copy of the tenancy agreement, receipts, utility bills, monetary breakdown of his claim, and condition inspection report in evidence.

Analysis

Based on the undisputed testimony of the landlord provided during the hearing, the documentary evidence and on the balance of probabilities, I find the following.

Test for damages or loss

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in sections 7 and 67 of the *Act*. Accordingly, an applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

In this instance, the burden of proof is on the landlord to prove the existence of the damage/loss and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the tenants. Once that has been established, the landlord must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the landlord did everything possible to minimize the damage or losses that were incurred.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

Item 1 – The landlord has claimed \$424.76 for unpaid electrical utilities and provided a detailed accounting during the hearing as to how he arrived at that amount including utility bills. The tenancy agreement submitted in evidence does not include utilities. As a result, **I find** the landlord has met the burden of proof in proving that the tenants owe the landlord **\$424.76** for unpaid electrical utilities.

Item 2 – The landlord has claimed \$100.00 for compensation for loss of August 2013 rent between August 1, 2013 and August 6, 2013 inclusive. I accept that the tenants did not vacate the rental unit until August 3, 2013. **I find** the landlord complied with section 7 of the *Act* which requires that the landlord do what is reasonable to minimize the damage or loss under the *Act*. **I find** by securing new tenants who moved into the rental unit as of August 7, 2013, and that the landlord only suffered a shortfall in rent of \$100.00, that the landlord has met the burden of proof and is entitled to compensation in the amount of **\$100.00** for loss for the portion of August 2013 loss of rent being claimed.

Item 3 - The landlord has claimed \$597.29 for repair costs as a result of damage to the rental unit caused by the tenants. The landlord submitted the incoming and outgoing condition inspection report in evidence. **I find** the landlord has failed to meet the burden of proof for this portion of his claim as the condition inspection report submitted in evidence indicates that everything was marked with a “G” to represent good condition at the end of the tenancy, except “treads and landings” which are marked as damaged at the start and the end of the tenancy. Furthermore, one of the six items marked with a “G” and “DT” to represent good condition and “dirty” condition was actually marked as “damaged” in the incoming inspection. As a result, **I dismiss** this portion of the landlord’s claim in full due to contradictory evidence submitted by the landlord, without leave to reapply.

Item 4 - The landlord has claimed \$915.00 for cleaning costs related to cleaning the rental unit. The landlord testified that it took a total of 30.5 hours to clean the rental unit which included the disposal of garbage left behind by the tenants. **I find** the tenants did not leave the rental unit in reasonably clean condition at the end of the tenancy based on the photo evidence submitted by the landlord which is a breach of section 37 of the *Act*, which requires the tenants to leave the rental unit in reasonably clean condition, except for reasonable wear and tear. Therefore, **I find** the landlord has met the burden

of proof for this portion of his claim and is entitled to compensation in the amount of **\$915.00** for cleaning costs.

As the landlord's application had merit, **I grant** the landlord the recovery of the filing fee of **\$50.00**.

I find that the landlord has established a total monetary claim in the amount of **\$1,489.76** pursuant to section 67 comprised of \$424.76 for unpaid utilities, \$100.00 for loss of rent, \$915.00 for cleaning costs, plus the \$50.00 for the filing fee.

The landlord continues to hold the tenants' security deposit of \$500.00, which has accrued \$0.00 in interest since the start of the tenancy. I find the total monetary award of **\$1,489.76** meets the criteria under section 72(2)(b) of the *Act* to be offset against the tenants' security deposit. **I ORDER** the landlord to retain the tenants' full security deposit of \$500.00 in partial satisfaction of the landlord's monetary claim and **I grant** the landlord a monetary order under section 67 for the balance due to the landlord by the tenants in the amount of **\$989.76**.

Conclusion

The landlord has established a total monetary claim in the amount of \$1,489.76. The landlord has been ordered to retain the tenants' full security deposit of \$500.00 in partial satisfaction of the landlord's claim and the landlord has been granted a monetary order for the balance due to the landlord by the tenants in the amount of **\$989.76**. This order must be served on the tenant and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

This decision is final and binding on the parties, unless otherwise provided under the *Act*, and 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: December 12, 2013

Residential Tenancy Branch

