



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPB, MNR, MNDC, MNSD, FF

Introduction

This hearing convened as a result of an Application for Dispute Resolution by the Landlords for an Order of Possession based on a breach of the tenancy agreement, a Monetary Order for unpaid rent and money owed, authority to retain the security deposit in partial satisfaction of their claim and to recover the filing fee for the Application.

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

The Landlords testified that they served the Tenant with the Notice of Hearing and their Application on April 7, 2016 by registered mail to the mailing address provided by the Tenant on a letter she sent to the Landlords. The registered mail tracking number is provided on the cover page of this my Decision. The Landlords advised that the Tenant's son signed for the registered mail package on April 18, 2016.

Based on the above, I find the Tenant was duly served with Notice of the Hearing and I proceeded with the hearing in her absence.

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.

Preliminary and Procedural Matters

At the outset of the hearing, the Landlords testified that the tenant vacated the rental unit on approximately February 29, 2016. As a result, the Landlords requested to withdraw their request for an Order of Possession as the Tenant had already given up possession of the rental unit by vacating the rental unit on February 29, 2016.

Issues to be Decided

Has the Tenant breached the Act or tenancy agreement, entitling the Landlord to monetary relief?

Background and Evidence

The Landlord P.N. testified that this fixed term tenancy began June 1, 2015 and was set to end on May 31, 2016. A copy of the tenancy agreement was also provided in evidence. She also advised that monthly rent was payable in the amount of \$850.00 and that the Tenant paid a security deposit in the amount of \$425.00 on June 1, 2015.

P.N. further testified that the on March 3, 2016 the Landlords discovered the Tenant had moved from the rental unit; she stated that the Tenant left a letter advising that she was vacating the property as of February 29, 2016 due to the failing health of her father, grandfather and her own.

The Landlords claimed loss of rent for February and March 2016 as they were not able to rent the unit until April 2016. They also claimed the costs associated with advertising the cabin for rent after the Tenant breached the fixed term tenancy.

P.N. testified that the rental unit required cleaning and repairs due to the condition it was left in by the Tenant. The Landlords described the rental unit as being a "disaster", and stated that it appeared as though the Tenant made little or no effort to clean the rental unit. They also stated that the Tenant installed curtain rods and coat racks as well as stickers on the walls without permission and which resulted in numerous large holes in the walls requiring wall repair and repainting.

P.N. also testified that the Tenant also left considerable amounts of garbage in the basement. P.N. testified that the condition the stove was left in was so poor that it could not be cleaned and required replacement.

Photos submitted by the Landlords in evidence confirm the testimony of P.N. and R.N. in this regard.

The Landlords submitted in evidence a Monetary Orders Worksheet wherein the following amounts were claimed:

Carpet cleaning	\$89.24
Garbage dumping fees	\$16.00
Replacement light bulbs	\$30.83
Pressure washing of basement	\$52.00
Cleaning of windows and cupboards	\$60.00
Repairs to walls	\$82.50
Advertising	\$14.70
Registered mail	\$13.60
Loss of rent for February and March 2016	\$1,700.00
TOTAL CLAIMED	\$2,058.87

The Landlords also claimed recover of the \$100.00 filing fee as well as authority to retain the Tenant's security deposit of \$425.00 towards any amounts awarded.

Analysis

In a claim for damage or loss under section 67 of the *Act* or the 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 Landlords have the burden of proof to prove their claim.

Section 7(1) of the *Act* provides that if a Landlord or Tenant does not comply with the *Act*, regulation or tenancy agreement, the non-complying party 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.

Based on the above, the Landlords' undisputed testimony and evidence, and on a balance of probabilities, I find as follows.

Pursuant to the fixed term tenancy agreement entered into evidence the Tenant agreed to rent the rental unit until May 31, 2016. By vacating the rental unit prior to May 31, 2016, she breached the agreement and was potentially liable for paying rent for the balance of her rental term. I accept the undisputed testimony of the Landlord that the rental unit was re-rented as of April 2016 and accordingly I grant them recovery of the loss of rent for February and March 2016. I also award them recovery of the advertising costs.

A tenant is responsible for damage they may cause by their actions or neglect including actions of their guests or pets. The condition in which a Tenant should leave the rental unit at the end of the tenancy is defined in Part 2 of the Act as follows:

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.

I am satisfied, based on the Landlords' undisputed testimony as well as the photos submitted in evidence that the Tenant breached section 37. I accept the undisputed testimony and evidence of the Landlords as to the condition of the rental unit and find the amounts claimed to be reasonable.

I find that the Landlords have established the amounts claimed, save and except for the cost of registered mail (which is not recoverable under the *Act*), and I grant them a total monetary claim of **\$2,145.27** including the following:

Carpet cleaning	\$89.24
Garbage dumping fees	\$16.00
Replacement light bulbs	\$30.83
Pressure washing of basement	\$52.00
Cleaning of windows and cupboards	\$60.00
Repairs to walls	\$82.50
Advertising	\$14.70
Loss of rent for February and March 2016	\$1,700.00
Filing fee	\$100.00
TOTAL AWARDED	\$2,145.27

I authorize the Landlords, pursuant to section 38 of the *Act*, to retain the Tenant's security deposit in the amount of \$425.00 in partial satisfaction of their claim and I grant the Landlords a Monetary Order under section 67 for the balance due of **\$1,720.27**.

This Monetary Order must be served on the Tenant as soon as possible and may be filed in the Provincial Court (Small Claims) and enforced as an Order of that Court.

Conclusion

The Landlords may keep the security deposit and interest in partial satisfaction of the claim, and are granted a Monetary Order for the balance due in the amount of **\$1,720.27**.

This decision is final and binding on the parties, except as 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: August 24, 2016

Residential Tenancy Branch

