



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding ACONA INVESTMENTS LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MND MNR MNSD MNDC FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord under the *Residential Tenancy Act* (the “*Act*”) for a monetary order for damage to the unit, site or property, for authority to keep all or part of the security deposit and pet damage deposit, for money owed or compensation for damage or loss under the *Act*, regulation, or tenancy agreement, for unpaid rent or utilities, and to recover the cost of the filing fee.

An agent for the landlord (the “agent”) and the tenant appeared at the teleconference hearing and gave affirmed testimony. During the hearing the parties were given the opportunity to provide their evidence orally and ask questions about the hearing process. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

Neither party raised concerns regarding the service of documentary evidence by the landlord. The tenant confirmed that documentary evidence was not submitted by the tenant.

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 tenant’s security deposit and pet damage deposit under the *Act*?

Background and Evidence

A copy of the tenancy agreement was submitted in evidence. A fixed term tenancy began on December 15, 2015 and ended on January 3, 2016. The parties disputed whether the rental unit keys were returned. The landlord stated that the rental unit keys

were not returned to the landlord. The tenant stated that he returned the rental unit keys. Monthly rent in the amount of \$895.00 was due on the first day of each month. A security deposit of \$447.50 and a pet damage deposit of \$447.50 were paid by the tenant, which the landlord continues to hold.

The landlord has applied for a monetary claim in the amount of \$1,927.66 comprised of the following:

ITEM DESCRIPTION	AMOUNT CLAIMED
1. Lease breach fee	\$729.75
2. Loss of January 2016 rent	\$895.00
3. Cost of cleaning	\$78.75
4. Lock rekeying	\$224.16
TOTAL	\$1,927.66

Regarding item 1, the agent referred to page two of the tenancy agreement which reads as follows:

“...**Leasebreach** – If the tenant vacates prior to expiration of Lease the tenant will be responsible for any costs incurred by the Landlord to re rent the premise including liquidated damages of the greater of : ½ month rent plus gst or min \$695.00 plus gst. This will include but not limited to loss of rent up to the expiration of the lease, fees paid to management agencies and credit checks. The Landlord has a duty to mitigate loss by acting in a prompt manner to re rent the premise.”

[reproduced as written]

The amount claimed for this portion of the landlord's claim is \$729.75 and the monthly rent \$895.00 per month. The tenant did not agree with any portion of the landlord's monetary claim. The tenant testified that while he moved in December 31, 2015 he moved out three days later as he claimed that the rental unit was not clean, and the rental unit required repairs. The tenant confirmed that he did not submit a letter to the landlord to revoke the tenancy agreement. The agent stated that the rental unit was re-rented effective February 1, 2016.

Regarding item 2, the tenant confirmed that he advised the agent that he would be placing a stop-payment on his rent cheque for January 2016 and as a result, no rent was received by the landlord from the tenant for January 2016.

Regarding item 3, the landlord has claimed \$78.75 for cleaning costs. The agent stated that when they entered the rental unit there was a “foul smell” coming from the rental unit which the tenant denied. The landlord submitted a copy of the condition inspection report which was not completed at the end of the tenancy. The agent stated that no photos were submitted to support the cleaning required. An invoice was submitted in evidence in support of the amount claimed which was \$75.00 plus tax for a total of \$78.75 for “cleaning of suite”.

Regarding item 4, the agent referred to the same receipt as in item 3 which indicated “re key all locks” in the amount of \$213.49 plus taxes. I note that the condition inspection report does not indicate anything not being returned as that portion of the condition inspection report was left blank by the agent. The agent referred to a note that was not submitted in evidence regarding the return of keys. The tenant stated that he returned the rental unit keys in the morning of January 4, 2016 to “a lady” but could not recall the name of the person.

Analysis

Based on the documentary evidence before me and the testimony provided during the hearing, 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 what 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 tenant. 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 what was reasonable to minimize the damage or losses that were incurred.

Item 1 – The amount claimed for this portion of the landlord's claim is \$729.75 for the lease breach fee. The monthly rent \$895.00 per month. Page two of the tenancy agreement indicates the following regarding the lease breach fee:

“...**Leasebreach** – If the tenant vacates prior to expiration of Lease the tenant will be responsible for any costs incurred by the Landlord to re rent the premise including liquidated damages of the greater of : ½ month rent plus gst or min \$695.00 plus gst. This will include but not limited to loss of rent up to the expiration of the lease, fees paid to management agencies and credit checks. The Landlord has a duty to mitigate loss by acting in a prompt manner to re rent the premise.”

[reproduced as written with my emphasis added]

Residential Tenancy Branch Policy Guideline #4 – Liquidated Damages states that in terms of liquidate damages a sum is a penalty if it is extravagant in comparison to the greatest loss that could follow a breach. I find the amount of \$729.75 for liquidated damages to be extravagant and excessive compared to the monthly rent, which is only \$895.00. Therefore, **I dismiss** this portion of the landlord's claim as I find the amount being claimed for liquidated damages is extravagant and excessive compared to the monthly rent of the rental unit, and due to insufficient evidence to support that the amount of \$729.75 is an actual pre-determination of the actual costs related to re-renting the rental unit.

Item 2 – There is no dispute that January 2016 rent was not paid by the tenant as the tenant confirmed that he advised the agent that he would be placing a stop-payment on his rent cheque for January 2016. Section 26 of the *Act* states that a tenant must pay rent when it is due in accordance with the tenancy agreement. In the matter before me, I find that rent was due on the first day of each month and that the tenant breached section 26 of the *Act* by failing to pay \$895.00 for January 2016 rent. I note that the landlord minimized their loss by securing a new tenant effective February 1, 2016 and that the landlord complied with section 7 of the *Act* accordingly by minimizing their damage or loss under the *Act*. Therefore, I find the landlord has met the burden of proof for this portion of their claim and I grant the landlord **\$895.00** as a result.

Item 3 - The landlord has claimed \$78.75 for cleaning costs. Section 35 of the *Act* applies and states:

Condition inspection: end of tenancy

35 (1) The landlord and tenant together must inspect the condition of the rental unit before a new tenant begins to occupy the rental unit

(a) on or after the day the tenant ceases to occupy the rental unit, or

(b) on another mutually agreed day.

(2) The landlord must offer the tenant at least 2 opportunities, as prescribed, for the inspection.

(3) The landlord must complete a condition inspection report in accordance with the regulations.

(4) Both the landlord and tenant must sign the condition inspection report and the landlord must give the tenant a copy of that report in accordance with the regulations.

(5) The landlord may make the inspection and complete and sign the report without the tenant if

(a) the landlord has complied with subsection (2) and the tenant does not participate on either occasion, or

(b) the tenant has abandoned the rental unit.

[my emphasis added]

As the landlord failed to complete an outgoing condition inspection report, and considering that the tenant disputed this portion of the landlord's claim, I find the landlord has failed to meet part one of the test for damages or loss as described above. Therefore, this portion of the landlord's claim is **dismissed without leave to reapply** due to insufficient evidence.

Regarding item 4, the agent referred to the same receipt as in item 3 which indicated "re key all locks" in the amount of \$213.49 plus taxes. As the condition inspection report does not support that keys were not return to the landlord, I find that the landlord has failed to meet part one of the test for damages or loss. Therefore, this portion of the landlord's claim is **dismissed without leave to reapply** due to insufficient evidence. As the landlord's application was only partially successful, I **grant** the landlord the recovery half the cost of the filing fee in the amount of **\$50.00**. The landlord continues to

hold the tenant's security deposit of \$447.50 and pet damage deposit of \$447.50 which has accrued \$0.00 in interest to date.

Monetary Order – I find that the landlord has established a total monetary claim in the amount of **\$945.00** comprised of \$895.00 for item two plus recovery of \$50.00 of the filing fee. I find this claim meets the criteria under section 72(2)(b) of the *Act* to be offset against the tenant's security deposit of \$447.50 and pet damage deposit of \$447.50. I **authorize** the landlord to retain the tenant's full security deposit of \$447.50 and full pet damage deposit of \$447.50 in partial satisfaction of the landlord's monetary claim, and I grant the landlord a monetary order under section 67 for the balance due by the tenant to the landlord in the amount of **\$50.00**.

The tenant is **cautioned** to comply with section 26 of the *Act* in the future.

The landlord is **cautioned** to comply with section 35 of the *Act* in the future.

Conclusion

The landlord's application is partially successful as indicated above.

The landlord has established a total monetary claim in the amount of \$945.00 as described above. The landlord has been authorized to retain the tenant's full security deposit of \$447.50 and full pet damage deposit of \$447.50 in partial satisfaction of the landlord's monetary claim. The landlord has also been granted a monetary order under section 67 for the balance due by the tenant to the landlord in the amount of \$50.00. 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: November 9, 2016

Residential Tenancy Branch