



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MND, MNDC, MNSD, FF

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the Act) for:

- a monetary order for unpaid rent, for damage to the rental unit, and for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38;
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The landlord's agent (the landlord) attended the hearing via conference call and provided undisputed affirmed testimony. The tenants did not attend or submit any documentary evidence. The landlord stated that the tenants were each served with a notice of hearing package via Canada Post Registered Mail on May 20, 2016 which was returned as "unclaimed" after attempts at service were made. The landlord also stated that the submitted documentary evidence packages were served to the tenants via Canada Post Registered Mail on November 4, 2016. The landlord provided in her direct testimony the Customer Receipt Tracking numbers as confirmation of service. I accept the undisputed affirmed evidence of the landlord and find that the notice of hearing and the submitted documentary evidence packages were properly served as per sections 88 and 89 of the Act. Although the tenants did not "claim" the packages, I find that the tenants are deemed served as per section 90 of the Act 5 days later.

At the outset the landlord indicated that she wished to amend the monetary claim increasing it to \$6,562.00. It was clarified with the landlord that an amendment to the application was not filed, nor was the tenants served with notice of this amendment. The landlord indicated that the increase was for a continued loss of rental income as originally applied for by the landlord. I find based upon the landlord's submissions that as the monetary claim increase was a continued loss of the original amount claimed that the increase to \$6,562.00 shall be allowed.

Issue(s) to be Decided

Is the landlord entitled to a monetary order for unpaid rent, for damage, for money owed or compensation for damage or loss and recovery of the filing fee?

Is the landlord entitled to retain all or part of the security deposit?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

This tenancy began on December 1, 2015 on a fixed term tenancy ending on November 30, 2016 as shown by the submitted copy of the signed tenancy agreement dated November 7, 2015. The monthly rent was \$2,500.00 payable on the 1st day of each month. A security deposit of \$1,250.00 was paid on November 4, 2015. A condition inspection report(s) for the move-in was completed on November 27, 2015 and a move-out completed on May 6, 2016.

The landlord states that the tenant breached the fixed term tenancy by prematurely ending by notifying the landlord in an email on April 29, 2016 to vacate the rental unit by April 30, 2016.

The landlord clarified that the tenants had vacated by April 30, 2016, but that due to the tenants' work schedule was not able to meet with the landlord for the condition inspection report for the move-out until May 6, 2016.

The landlord seeks a monetary claim of \$6,562.00 which consists of:

\$2,500.00	Unpaid Rent, May 2016
\$2,500.00	Loss of Rental Income, June 2016
\$1,232.00	Loss of Rental Income, July 1 to 15 2016
\$330.75	Professional Carpet Cleaning

The landlord stated that the tenants breached the fixed term tenancy by prematurely ending it on April 29, 2016 for April 30, 2016. A condition inspection report was completed by both parties on May 6, 2016 when the tenants returned the keys. The landlord stated that the rental unit was immediately advertised for rent online, but was not successfully re-rented until July 15, 2016. The landlord seeks the unpaid rent for May 2016 and the loss of rental income for June and ½ of July 2016.

The landlord also stated that as part of the signed tenancy agreement there is an agreed upon clause for the tenants to have the rental unit professional carpet cleaned. The landlord stated that there were no issues with the carpet, but cited that the \$330.75 invoice for professional carpet cleaning was paid and that the tenant should be responsible. The landlord relies upon clause 23 of the signed tenancy agreement which states:

Carpets and Windows. The tenant is responsible for periodic cleaning of carpets and window coverings. While professional cleaning is recommended at all times, if the carpets and window coverings are new or professionally cleaned at the start of the tenancy, the tenant will pay for professional cleaning at the end of the tenancy.

Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

I accept the undisputed affirmed evidence of the landlord and find that the tenants prematurely ended the fixed term tenancy when they notified the landlord on April 29, 2016 by email to end the tenancy on April 30, 2016.

The tenants failed to provide sufficient notice for the landlord to attempt to re-rent the unit for May 2016. On this basis, the tenants are liable for unpaid rent of \$2,500.00 for May 2016.

I find based upon the undisputed affirmed evidence of the landlord that upon being informed of the tenants' vacating the rental unit, the landlord attempted to re-rent the unit on May 4, 2016 by advertising it online, but were unsuccessful until July 15, 2016. I find that as the tenants breached the fixed term tenancy and the landlord made reasonable efforts to re-rent the unit without success are liable for the loss of rental income for June (\$2,500.00) and ½ July 2016 (\$1,232.00) of \$3,732.00.

On the landlord's claim for the cost of professional carpet cleaning of \$330.75, I find that the landlord has failed as I find it unconscionable and unenforceable. This portion of the landlord's claim is dismissed. Although it is undisputed that the parties entered into an agreement where professional carpet cleaning was agreed upon as per clause #23 of the signed tenancy agreement, the landlord has provided undisputed affirmed testimony that the carpet was clean and was free from any issues. I find that this renders a professional carpet cleaning service of no value as this term is strictly for the benefit of the landlord and fails to correct any damage or loss caused by the tenant. Clause #23 of the signed tenancy agreement states that professional carpet cleaning service is required by the tenant solely because the rental unit carpet was either new or professionally cleaned at the beginning when the tenant moved in. Residential Tenancy Branch Policy Guideline #8, Unconscionable Terms states,

Under the Residential Tenancy Act and the Manufactured Home Park Tenancy Act, a term of a tenancy agreement is unconscionable if the term is oppressive or grossly unfair to one party.

Terms that are unconscionable are not enforceable¹

The landlord has established a total monetary claim of \$6,232.00 for unpaid rent/loss of rental income.

The landlord having been successful is entitled to recovery of the \$100.00.

I order that the landlord may retain the \$1,250.00 security deposit in partial satisfaction of the claim. The landlord is entitled to a monetary order of \$5,082.00.

Conclusion

The landlord is granted a monetary order for \$5,082.00.

This order must be served upon the tenants. Should the tenants fail to comply with this order, the order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

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: November 18, 2016

Residential Tenancy Branch