



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNDC, MNSD, O, FF

Introduction

This hearing dealt with a landlord's application for a Monetary Order for compensation for liquidated damages; cleaning and damage repair costs; and, authorization to retain the security deposit. The tenants did not appear at the hearing. The landlord submitted that the hearing documents were sent to each tenant via registered mail on May 18, 2016 to the forwarding address provided on the tenant's notice to end tenancy and during the move out inspection. The landlord provided copies of the registered mail receipts, including tracking numbers, the tenant's notice to end tenancy, and the move-out inspection report. I was satisfied that the tenants were notified of this proceeding in a manner that complies with the Act and I continued to hear from the landlord without the tenants present.

Issue(s) to be Decided

1. Has the landlord established an entitlement to receive compensation from the tenants in the amounts claimed?
2. Is the landlord authorized to retain the tenants' security deposit?

Background and Evidence

The one year fixed term tenancy started July 1, 2015 and was set to expire on June 30, 2016. The tenants paid a security deposit of \$762.50 and were required to pay rent of \$1,525.00 on the first day of every month. The tenancy agreement includes a liquidated damages clause that permits the landlord to charge the tenants liquidated damages of \$762.50 in the event the tenancy ends before the expiry date of the fixed term.

On March 31, 2016 the tenants gave the landlord notice of their intention to end the tenancy early, effective April 30, 2016. The landlord responded to the tenants in writing on April 1, 2016 to inform the tenants that they had a fixed term tenancy agreement and that the tenants would be responsible for liquidated damages and loss of rent for the remainder of the fixed term if the unit is not re-rented. On April 4, 2016 the tenants proceeded to sign a document entitled "Acknowledgement of early end of tenancy notice" whereby the tenants acknowledge that they are ending the fixed term agreement early and understand their responsibilities under the fixed term agreement.

The landlord submitted that new tenants were secured for a tenancy that started May 1, 2016. As such, the landlord is not seeking recovery of loss of rent. Rather, the landlord seeks liquidated damages in the amount of \$750.00.

The landlord also seeks to recover costs to clean the rental unit and the blinds in the amounts of \$157.50 and \$62.50 as the tenants did not leave the rental unit sufficiently clean at the end of the tenancy. The landlord seeks to recover \$15.09 and \$27.17 for the cost to purchase light bulbs that were burned out and new drip bowls for the stove as the ones left by the tenants were so dirty it was more economical to replace them. The landlord seeks to recover the cost of a new curtain rod in the amount of \$13.30 and a key for the postal box in the amount of \$4.12 since these items were missing at the end of the tenancy. The landlord provided receipts and invoices in support of the above amounts claimed. The move-out inspection report provided to me includes several notations of areas not cleaned, the missing curtain rod and burned out light bulbs.

The landlord also seeks to recover \$450.00 for wall repairs and painting. The landlord provided an estimate to make the repairs and repaint. The landlord explained that the work was done after filing and that the landlord has a receipt in the amount of \$450.00. The move-out inspection report indicates damage to the kitchen wall; damage and scratches to the entry door; and, an excessive number of holes in the master bedroom wall.

I noted that the tenant indicated on the move-out inspection report that he did not agree with the landlord's assessment and that most of the report was false; however, no other particulars were provide don the report by the tenant in the space provided.

In addition to the move-in and move-out inspection report, the landlord provided copies of the receipts, invoices and estimate for repairs and cleaning; along with photographs of the rental unit at the end of the tenancy. The photographs show several areas of the rental unit that are unclean; walls with large holes and damaged by a glued on sheet of blackboard material; and, the scratch and damaged entry door.

Aside for the above amounts, the landlord also requested recovery of the cost to develop photographs used as evidence in this proceeding. I dismissed this claim summarily as costs to prepare for or participate in a dispute resolution proceeding are not recoverable under the Act by either party, with the exception of the filing fee.

Analysis

Upon consideration of everything presented to me, I provide the following findings and reasons.

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 section 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.

Under section 37 of the Act, a tenant is required to leave a rental unit vacant, reasonably clean and undamaged at the end of the tenancy. The tenant is also required to return all keys or means of access to the rental unit or residential property.

Although the tenant indicated that he did not agree with much of the landlord's assessment on the move-out inspection report, the tenant did not provide any further particulars in the space provided on the form for doing so. Nor did either tenant appear at the hearing to put forth a position as to the landlord's claims. In contrast, the landlord provided oral and written submissions; photographs; and, receipts, invoices and an estimate in support of his claims against the tenants. Upon review of the landlord's evidence and in the absence of any submissions from the tenants I accept the landlord's position that the tenants failed to leave the rental unit sufficiently clean and left the walls and entry door damaged, along with burned out light bulbs; and, a missing curtain rod and postal key. Therefore, I grant the landlord's request to recover cleaning and damage costs from the tenants in the amount claimed, along with costs to purchase new light bulbs, drip bowls, a new curtain rod and postal key.

As for liquidated damages, Residential Tenancy Policy Guideline 4 provides that a liquidated damages clause is a clause in a tenancy agreement where the parties agree in advance the damages payable in the event of a breach of the fixed term by the tenant. If a liquidated damages clause is determined to be valid, the tenant must pay the stipulated sum unless the sum is found to be a penalty. Upon review of the liquidated damages clause in the tenancy agreement and in the circumstances before me, I find the amount payable under the clause to be a reasonable pre-estimate and is not a penalty. Although the landlord could have charged \$762.50 in liquidated damages based upon the tenancy agreement, the landlord requested a lesser amount of \$750.00 and I award the landlord that amount.

Since the landlord's application had merit I further award the landlord recovery of the \$100.00 filing fee.

I authorize the landlord to retain the tenants' security deposit in partial satisfaction of the amounts awarded to the landlord with this decision.

In light of the all of the above, I provide the landlord with a Monetary Order to serve and enforce upon the tenants, calculated as follows:

Liquidated damages	\$ 750.00
General cleaning	157.50
Blind cleaning	62.50
Drip bowls and light bulbs (27.17 + 15.09)	42.26
Curtain rod and postal key (13.30 + 4.12)	17.42
Wall damage and painting	450.00
Filing fee	100.00
Less: security deposit	<u>(762.50)</u>
Monetary Order	\$ 817.18

Conclusion

The landlord has been authorized to retain the tenants' security deposit and has been provided a Monetary Order for the balance of \$817.18 to serve and enforce upon the tenants.

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 28, 2016

Residential Tenancy Branch