



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNR, 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 and for damage to the unit pursuant to section 67;
- authorization to recover their filing fee for this application from the tenant pursuant to section 72.

Both parties attended the hearing via conference call and provided affirmed testimony. The landlords stated that the tenants were served with the notice of hearing package and the submitted documentary evidence via Canada Post Registered Mail on June 24, 2016 and has submitted a copy of the Canada Post Customer Receipt Tracking number as confirmation. The tenants confirmed receipt of the landlord's notice of hearing package and the submitted documentary evidence. The tenants stated that the landlords were served with the tenants' submitted documentary evidence via regular post on November 29, 2016. The landlords confirmed receipt of the tenants' evidence package 2 days before the scheduled hearing. The landlords stated that there were no issues in receiving the tenants' evidence late and that the hearing could proceed. As both parties have attended and confirmed receipt of the notice of hearing package and the submitted documentary evidence, I am satisfied that both parties have been sufficiently served as per section 90 of the Act.

Issue(s) to be Decided

Are the landlords entitled to a monetary order for unpaid rent, damage and recovery of the filing fee?

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 June 1, 2012 on a fixed term tenancy ending on May 31, 2013 and then thereafter on a month-to-month basis as shown by the submitted copy of the signed tenancy agreement. The monthly rent was \$1,850.00 payable on the 1st day of each month and a security deposit of \$925.00 was paid. A condition inspection report for the move-in was completed on June 1, 2012. No condition inspection report for the move-out was completed.

The landlords seek a monetary claim of \$616.35 which consists of:

\$119.36	Unpaid Rent for 2 days at \$59.68 per day
\$377.00	Estimate for cleaning
\$120.00	Estimate for Blind Cleaning

The landlords provided affirmed testimony that the tenants failed to end the tenancy on September 30, 2016 by not vacating the rental unit until October 1, 2016. The landlords seek recovery of unpaid rent for 2 days which is equal to \$119.36 (\$59.68 per day). The tenants dispute this stating that the landlords had agreed to the possession date being changed to October 1, 2016. The tenants referred to the email chain submitted by the landlords' evidence #12 to 14 and #13 of 14.

The landlords provided affirmed testimony that the tenants left the rental unit dirty requiring cleaning. The landlords relied upon an online estimate for \$377.00 based upon 2 ½ hours of cleaning with 3 cleaners. The landlords have submitted a copy of the online estimate in support of their application. The landlords stated that they did not incur this cost, but instead paid their daughter \$500.00 to clean the rental unit. The landlords also stated that it took them and their daughter 7 days to clean the rental unit.

The landlords provided affirmed testimony that the tenants left the blinds in the rental unit dirty requiring cleaning. The landlords seek compensation of \$120.00 based upon a telephone estimate from a blind cleaning company for 6 hours of cleaning at \$20.00 per hour.

The tenants disputed the landlords' claims stating that the landlords were advised that the tenants would not be able to complete the move-out and cleaning by September 30, 2016 and that they would require until October 1, 2016. The tenants stated that they were given permission by the landlords to complete vacating the rental unit on October

1, 2016. The landlords argued that the agreement was for 1pm and not 9pm when the tenants completed their move-out. Both parties confirmed that possession of the rental unit was returned to the landlords at 9pm on October 1, 2016.

The tenants refer to an email from the landlords' evidence package marked as Evidence #12 and #13 of 14, which states,

Landlord: Hi Guys,
Just wanted to check with what time are we meeting tomorrow to do check out/keys/deposit?
Email Dated September 29, 2015 at 5:04pm

Tenant: Hi G,
We don't have the truck until late afternoon so will be moving until late. Is first thing Thursday morning ok?
Email Dated September 29, 2015 at 5:43pm

Landlord: Sure, that's fine.
What time do you want to meet?
Email Dated September 29, 2015 at 6:22pm

Tenant: Sorry G I forgot to write you back. I have to drop off the truck at 8 or so how about 9? Is that ok?
Email Dated September 30, 2015 at 5:29pm(MDT)

Landlord: Sure, S will be there at 9.
I don't know if I will make it.
Thx, G
Email Dated September 30, 2015 at 4:58pm

Tenant: We're still moving and probably will be through the night ☹. The bodies that had promised to either didn't make it or couldn't stay long so it's mostly been just J. and me. We'll do the best we can to still be done by 9 but don't rush over if you have other things to do
☺ J

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. When a party makes a claim for damage or loss the burden of proof lies with the applicant to establish their claim. To prove a loss the applicant must satisfy the following four elements:

1. Proof that the damage or loss exists,
2. Proof that the damage or loss occurred due to the actions or neglect of the other party in violation of the Act, Regulation or tenancy agreement,
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage, and
4. Proof that the applicant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

In reviewing the evidence provided by both parties, I find that the tenant did over hold the rental unit until October 1, 2016 leaving it uncleaned. However, I find that the landlords have failed to justify their monetary claims.

I find based upon the evidence provided that the landlord did not authorize the tenants to overhold the rental unit until 9pm of October 1, 2016. However, the landlords have failed to justify their claim for loss of rental income/unpaid rent of \$119.36. The landlords confirmed in their direct testimony that the landlords did not suffer a loss of rent, but an inconvenience as they have confirmed that there was no expectation of rental income, but that they were in the process of moving in and making renovations. As such, the landlords suffered no losses to be compensated. This portion of the landlords' claim is dismissed.

On the landlords' second and third items of claim, I find that the landlords have failed to justify their claims. Although the tenants confirmed that cleaning was not done due to completing the move-out late, the landlords' base their monetary claims on estimates for amounts that were not incurred. On the cleaning claim of \$377.00, the landlords stated that no cost was incurred for cleaning, but that the landlords' daughter was paid \$500.00 to clean the rental unit. This estimated cleaning cost was based upon an online estimate as shown by the submissions of the landlords. The landlords failed to provide any supporting evidence of payment of the \$500.00 to the daughter for cleaning. On the blind cleaning claim of \$120.00 which was based upon a telephone estimate, the landlords stated that no costs were incurred as the landlords cleaned the rental unit themselves over a 7 day period.

However, I note that the tenants confirmed overholding the unit and leaving it uncleaned, I grant the landlords a nominal award of \$200.00 for the inconvenience.

The landlords have been partially successful in their application and as such, I order that the landlords are entitled to partial recovery of the filing fee of \$50.00.

Conclusion

The landlord is granted monetary order of \$250.00.

This order must be served upon the tenants. Should the tenants fail to comply with the 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: December 13, 2016

Residential Tenancy Branch