



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Code MNR, MND, MNSD, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord filed under the Residential Tenancy Act (the "Act"), for a monetary order for unpaid utilities, for damages to the unit and other money owed, and for an order to retain the security deposit in partial satisfaction of the claim.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing.

The parties confirmed receipt of all evidence submissions and there were no disputes in relation to review of the evidence submissions

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts and issues in this decision.

Preliminary and Procedural matters

At the outset of the hearing the tenant stated that the process is unfair as they were served with the landlord's application two (2) years after the tenancy ended. The tenant stated they did not file any evidence because they want the landlord's claim dismissed.

The landlord stated that the tenant did not provide a forwarding address and they were waiting to see if one would be provided or found. The landlord stated that they had to apply for a subservice order to have the tenant served at their place of work.

In this case, the landlord's application was filed on April 24, 2016. The tenancy ended on April 30, 2018. Under the Act, the landlord had two years from when the tenancy ended to make their application.

Further, had the tenant provided their forwarding address as required by section 38 of the Act, at the end of the tenancy, the landlord would have only had 15 days to make their application. I find the tenant cannot claim a delay in process when they did not mitigate by giving the landlord their forwarding address.

Issues to be Decided

Is the landlord entitled to a monetary order for unpaid utilities?

Is the landlord entitled to monetary compensation for damages?

Is the landlord entitled to retain the security deposit in partial satisfaction of the claim?

Background and Evidence

The parties agreed that they entered into a fixed term tenancy which began on November 1, 2015 and was to expire on October 31, 2016. Rent in the amount of \$850.00 was payable on the first of each month. The tenant paid a security deposit of \$425.00. The tenancy ended on April 30, 2016. Filed in evidence is a copy of the tenancy agreement.

The tenancy agreement at clause 5 stated that the tenant is responsible for liquidated damages in the amount of \$500.00, if the fixed term tenancy agreement is breached. The agreement also stated that tenant was responsible for 25% of the water, hydro and garbage.

The parties agreed a move-in was completed and move-out condition inspection report was completed by the landlord as the tenant did not participate in the move-out inspection, even after given a final notice to do so.

The landlord claims as follows:

a.	Unpaid utilities	\$ 599.23
b.	Late fees, NSF fee	\$ 100.00
c.	Liquidated damages	\$ 500.00
d.	Damages to the unit	\$3,223.96
e.	Loss of rent for May 2016	\$ 850.00
	Filing fee	\$ 100.00
	Total claimed	\$5,373.19

Unpaid utilities

The landlord testified that the tenant failed to pay their portion of the utilities. The landlord stated that the tenant did not pay their hydro from December 24, 2015 to April 30, 2016. The landlord stated that the tenant failed to pay their portion of the water bill from November 11, 2015 to April 30, 2016. The landlord seeks to recover unpaid utilities in the amount of \$599.23. Filed in evidence are copies of the utilities invoices.

The tenant testified that they are not sure if they gave the landlord any cheque for the utilities.

Late fees, NSF fee

The landlord testified that the tenancy agreement provides a clause that the landlord is entitled to a \$25.00 late fee if rent is not paid on the 1st of each month. The landlord stated that they are also entitled to a \$25.00 NSF fee.

The landlord testified that the rent for February 2016 was returned as NSF and it was paid late. The landlord seeks to recover the amount of \$50.00.

The landlord testified that the rent for March 2016 was late as it was not paid until March 11, 2016. The landlord stated the tenant was served with a notice to end tenancy. The landlord seeks to recover the amount of \$25.00.

The landlord testified that the rent for April 2016, was late and the tenant was served with a notice to end tenancy. The landlord stated that the tenant provided a cheque on April 11, 2016; however, the bank informed them that the tenant did not have sufficient funds and they sent the tenant a text message. The landlord stated that they went back to the bank on April 12, 2016, and the rent cheque was cashable. The landlord seeks to recover the amount of \$25.00.

The tenant testified that they are not responsible for any late or NSF fee for February 2016. The tenant stated rent was paid and that the cheque they issued to the landlord had two different amounts on it, in error. The tenant stated the bank removed the \$30.00 from the landlord's account, as that was an amount the landlord was not entitled to.

The tenant testified that they do not believe rent was late for the March 2016 or April 2016.

Liquidated damages

The landlord testified that the tenant breached the tenancy agreement by vacating the premises on April 30, 2016. The landlord stated the tenancy agreement has a liquidated damages clause for the cost of re-renting the premises. The landlord seeks to recover liquidated damages in the amount of \$500.00.

The tenant testified that the landlord ended the tenancy as they told them they were required to vacate the premises, even after rent was paid for April 2016.

The landlord argued that the tenancy ended as the tenant was served with a notice to end tenancy for unpaid rent and utilities. The landlord stated the rent and the utilities were not paid within the five (5) days. Filed in evidence is a copy of the notice to end tenancy.

Damages to the unit

The landlord testified that the tenant left the rental unit dirty and damaged. That they had to clean the appliances, cupboards, removed garbage, furniture. The landlord seeks to recover six (6) hours of their time for cleaning at the rate of \$25.00 for the total amount of \$150.00.

The landlord testified that they had to pay to have the garbage, and left behind furniture hauled away and seek to recover the cost of hauling in the amount of \$152.25.

The landlord testified that the tenant also painted part of the walls purple. The landlord stated they had to purchase paint to return the walls back to the original colour. Filed in evidence is a photograph.

The landlord testified that the tenancy caused damaged to the blinds on the door, and in the bathroom. Filed in evidence is a photograph.

The landlord testified that the tenant caused damage to the floor, by letting water from the kitchen sink leak causing the flooring to swell. The landlord stated that the floor was also severely scratched. The

landlord stated that they have not had the floor repaired and the rental unit is currently rented at a higher amount than what the tenant was paying for rent. Filed in evidence is a photograph.

The landlord testified that there were various holes in the walls that had to be fixed; there was a cracked tile that was under the washing machine. Filed in evidence is a photograph.

The tenant testified that they did not clean the appliances and there was likely some items left behind. The tenant stated that the landlord has staged the photographs as they have done that in the past.

The tenant testified that they did not paint any of the walls purple; however, they acknowledged that they attempted to fill the holes with wall putty.

Loss of rent for May 2016

The landlord testified that as a result of the condition that the tenant left the rental unit, and due to the breach of the fixed term agreement that they are entitled to recover loss of revenue for May 2016, in the amount of \$850.00.

The tenant testified they are not responsible for loss of rent as it was the landlord that ended the tenancy.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

In a claim for damage or loss under the Act or 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 landlord has the burden of proof to prove their claim.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

Section 7(1) of the Act states that if a landlord or tenant does not comply with the Act, regulation or tenancy agreement, the non-complying landlord or tenant 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.

Unpaid utilities

I accept the evidence of the landlord that the tenant did not pay their portion of the hydro and water. The tenant was unsure if they were paid and submitted no evidence of payment, such as cancelled cheque. I find the tenant breached the Act, when they failed to pay the utilities. Therefore, I find the landlord is entitled to recover unpaid utilities in the amount of \$599.23.

Late fees, NSF fee

I am not satisfied that the tenant was later with March 2016, rent or that their cheque was NSF. The bank records shows the landlord's account was debited the amount of \$30.00, as that was an overpayment made, because there were two different amounts on the cheque. Therefore, I find the landlord has failed to prove March 2016, was later or that it was NSF.

I am satisfied that the tenant was late with April 2016 and May 2016. The tenant could have provided banks statements to prove otherwise. I find the tenant breached the Act, when they failed to pay rent on time for April 2016 and May 2016. Therefore, I find the landlord is entitled to recover late fees in the amount of **\$50.00**.

Liquidated damages

The tenancy agreement provides a clause that if the fixed term agreement is breached that the landlord is entitled to recover liquidated damages, which is the estimate cost of re-renting the rental unit.

In this case, the tenant was served with a notice to end tenancy. The tenant issued a cheque dated April 9, 2016, which was provided to the landlord on April 11, 2016. The landlord stated that they went to the bank and they were told there was a not sufficient fund in the tenant's account. The landlord stated they contact the tenant which the tenant ensured them there was sufficient funds. The landlord stated on April 12, 2016, they were able to cash the cheque.

While both parties have provided a different version of events, I prefer the evidence of the landlord because the tenant could have provided a copy of their bank statement to prove that on April 11, 2016, they had sufficient funds in their account. Further, they did not pay the utilities.

I find the tenancy ended on the tenant's failure to pay rent and utilities within the five (5) days. The landlord is entitled to be in the same position as if the tenant did not breach the Act. Therefore, I find the landlord is entitled to recover liquidated damages in the amount of **\$500.00**.

Damages to the unit

Section 35(5) of the Act states the landlord may make the inspection, complete, and sign the report without the tenant if the landlord has complied with subsection (2) and the tenant does not participate on either occasion

Section 21 of the Residential Tenancy Regulation states a condition inspection report completed in accordance with this section is evidence of the state of repair and condition of the rental unit or residential property on the date of the inspection, unless either the landlord or the tenant has a preponderance of evidence to the contrary.

In this case, the tenant did not participate in the move-out condition inspection report even after they were given a final notice to do so. I find the landlord completed the report in the absent of the tenant and in accordance with the Act.

Both parties have provided different version of event, I find the tenant has not provided a preponderance of evidence to the contrary. Whereas the landlords provided a copy of the move-out condition inspection report, photographs and receipts.

I am satisfied with the damages and the amounts claimed as they are supported by receipts. I am not satisfied the landlord has suffered a loss with the wood floor, as the floor has not be repaired and they are currently collecting a high rent, 3 years later, and the useful lifespan of the existing floor is more likely than not expired now.

Therefore, I grant the landlord claim for damages, with the reduction of the floor, in the total amount of **\$1,078.96.**

Loss of rent for May 2016

Since I have found the tenant breached the Act, when they failed to pay rent and utilities, and were evicted from the rental unit. I find the landlord is entitled to an amount sufficient to put the landlord in the same position as if the tenant had not breached the Act. This includes compensating the landlord for any loss of rent up to the earliest time that the tenant could have legally ended the tenancy.

In this case, the landlord was unable to rent the premises for the month of May 2016, due to condition the rental unit was left in, as it was dirty and damaged. I find the loss of revenue for one month reasonable. Therefore, I find the landlord is entitled to recover loss of revenue for May 2016, in the amount of **\$850.00.**

Based on the above, I find that the landlord has established a total monetary claim of **\$3,178.19** comprised of the above described amounts and the \$100.00 fee paid for this application.

I most cases the security deposit will offset with any monetary order awarded. However, as the tenant did not provide the landlord with a forwarding address within one year after the tenancy end, I find section 39 of the Act, must be applied.

39 Despite any other provision of this Act, if a tenant does not give a landlord a forwarding address in writing within one year after the end of the tenancy,

- (a) the landlord may keep the security deposit or the pet damage deposit, or both, and
- (b) the right of the tenant to the return of the security deposit or pet damage deposit is extinguished

Therefore, I find the landlord was entitled to keep the security deposit as the tenant has breached the Act by not providing their forwarding address within one year. I grant the landlord an order under section 67 of the Act for the total amount of **\$3,178.19.**

This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court. The **tenant is cautioned** that costs of such enforcement are recoverable from the tenant.

Conclusion

The landlord is granted a monetary order pursuant to section 67 of the Act. The landlord is entitled to keep the security deposit pursuant to section 39 of the Act.

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 08, 2018

Residential Tenancy Branch