



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes 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 rent, for damages to the unit, for loss of revenue, for an order to retain the security deposit in partial satisfaction of the claim and to recover the cost of the filing fee.

The landlord attended the hearing. As the tenants did not attend the hearing, service of the Notice of Dispute Resolution Hearing was considered.

The Residential Tenancy Branch Rules of Procedure states that each respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing.

The landlord testified the Application for Dispute Resolution and Notice of Hearing were sent by registered mail on February 19, 2021 to both of the tenants.

The landlord testified that PS received the package on February 24, 2021. A Canada post tracking number was provided as evidence of service. I find PS was served in accordance with section 89 of the Act.

The landlord testified that JM received the package on February 23, 2021. A Canada post tracking number was provided as evidence of service. I find JM was served in accordance with section 89 of the Act.

I also note that the tenants received an email notification from the Residential Tenancy Branch, sent on June 7, 2021, reminding them that the hearing will take place on June 10, 2021, at 1:30 pm.

The landlord appeared gave affirmed testimony and was provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

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.

Issues to be Decided

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

Is the landlord entitled to monetary compensation for damages?

Is the landlord entitled to a monetary order for loss of revenue?

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

Background and Evidence

The tenancy began on December 1, 2017. Rent in the amount of \$2,000.00 was payable on the first of each month. The tenants paid a security deposit of \$1,000.00. The landlord stated that during the tenancy the parties agreed that the landlord could deduct \$75.00 from the security deposit and they currently hold the amount of \$925.00. The tenancy ended on July 7, 2020.

The landlord claims as follows:

| | | |
|----|---|--------------------|
| a. | Unpaid rent for June and July 2020 | \$ 3,000.00 |
| b. | Strata fines and fob replacement | \$ 914.00 |
| c. | Damages to rental unit | \$ 6,233.73 |
| d. | Loss of revenue for August, September, October, and half of November 2020 | \$ 7,000.00 |
| e. | Filing fee | \$ 100.00 |
| | Total claimed | \$17,247.73 |

Unpaid rent for June and July 2020

The landlord testified that the tenants only paid \$1,000.00 towards June 2020 rent and no rent for July 2020. The landlord seeks to recover the amount of \$3,000.00.

Strata fines and fob replacement

The landlord testified that the tenants failed to pay the strata fines they received for noise and parking infractions. The landlord seeks to recover the cost of \$700.00. Filed in evidence is strata ledger of strata fines for the premises.

The landlord testified that they had to replace the fob that was returned by the tenants as it was not working, and it was rusted. The landlord stated that this was from neglect as the fob looked like it had fallen in water. The landlord stated that the strata charged them the amount of \$214.00 to replace the fob. The landlord seeks to recover the cost of the fob in the amount of \$214.00. Filed in evidence is a photograph showing the fob was rusted and a receipt to replace the fob.

Damages to rental unit

The landlord testified that the rental unit was brand new and the tenants were the first to live in the rental unit.

The landlord testified that on July 6, 2020, the tenants were smoking in the bathroom and left the cigarette unattended, which caused the sprinkler system to be set off causing water damage to the rental unit and to two other units in the building. The landlord stated that when they talked to the tenants, they said it was from smoke from a candle; however, that is not the finding found from their insurance adjustor which was that it was from a lite cigarette.

The landlord stated that their insurance company had a restoration company attend and they had to make repairs to the entire rental unit, such as remove and replace flooring, remove and replace a portion of the drywall throughout the premises and remove and replace cabinets. The landlord stated that they had to pay the insurance deductible and seek to recover the cost of the insurance deductible in the amount \$2,500.00. Filed in evidence are documents related to the insurance claim.

The landlord testified that the tenants also caused other damage to the rental unit that is not related to the insurance claim. The landlord stated that the bathroom door was damaged as it looked to have been punched. The landlord stated they had to purchase a new door in the amount of \$280.22. Filed in evidence is a photograph of the door and a receipt for the new door.

The landlord testified that the dishwasher was in a state of that was incomprehensible. The landlord stated they have no idea what the tenants were doing; however, they had to replace the appliance that was only 3 years old. The landlord seeks to recover the cost of the appliance \$563.90 and labour for installation \$231.00 for the total amount of \$794.90. Filed in evidence is a receipt for the appliance and the installation cost.

The landlord testified that a shelf in the refrigerator door, was missing the plastic panel, which is to hold the food item in place. The landlord stated they could not simply replace the missing panel and they had to replace the entire shelf. The landlord seeks to recover the cost of the shelf in the amount of \$119.14. Filed in evidence is a photograph and receipt.

The landlord testified that the glass stove top was damaged as it was cracked and had to be replaced. The landlord seeks to recover the cost of \$514.50. Filed in evidence is a receipt.

The landlord testified that they had to have the mailbox locked repaired as the tenants had broken the key off in the lock. The landlord seeks to recover the cost of the repair in the amount of \$131.25. Filed in evidence is a photograph and a receipt.

The landlord testified that they had to pay a general contracting company the amount of \$1,758.75 to make repairs to damage caused by the tenants. The landlord stated that during the tenancy the tenants shattered the glass panel to the shower, and the tenants agreed to have it replaced; however, they never did have it repaired. The landlord stated that the tenants also broke the pocket door to the ensuite bathroom as it was also punched by the one of the tenants, which required a lot of labour to repair. The landlord stated the contracting company also repaired a broken blind and removed the junk left behind by the tenants. Filed in evidence are photographs and receipts from the contracting company.

The landlord testified that they had to buy paint and cleaning supplies. The landlord seeks to recover the cost of \$134.97.

Loss of revenue

The landlord testified that due to the damage caused by the tenants and the flood that was caused by the tenants' neglect, it took the restoration company and the general contractor three and a half months to make the rental unit suitable to occupy. The

landlord stated they were able to re-rent the unit on November 15, 2020. The landlord seeks to recover loss of revenue in the amount of \$7,000.00.

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.

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-comply 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.

In this case, both tenants were served with the landlord's application for dispute resolution, as the Canada post history shows they were accepted by the tenants. The tenants were also sent an email reminder from the Residential Tenancy Branch of the date and hearing time. Neither tenants appeared to dispute the landlord's claim. Therefore, I find it reasonable to conclude that the landlords' application is unopposed.

Unpaid rent for June and July 2020

I accept the landlord's undisputed testimony that the tenants failed to pay all rent owed for June and no rent for July 2020. I find the tenants breached section 26 of the Act, when they failed to pay rent as stated in their tenancy agreement and this caused losses to the landlords. Therefore, I find the landlord is entitled to recover unpaid rent for June and July 2020, in the amount of **\$3,000.00**.

Strata fines and fob replacement

I accept the landlord's undisputed testimony that the tenants failed to pay their strata fines for noise and parking infractions, I find the tenants breached their tenancy

agreement and this caused losses to the landlord. Therefore, I find the landlord is entitled to recover unpaid strata fines in the amount of **\$914.00**.

Damages to rental unit

How to leave the rental unit at the end of the tenancy is defined in Part 2 of the Act.

Leaving the rental unit at the end of a tenancy

37 (2) When a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.

Normal wear and tear does not constitute damage. Normal wear and tear refers to the natural deterioration of an item due to reasonable use and the aging process. A tenant is responsible for damage they may cause by their actions or neglect including actions of their guests or pets.

I accept the landlord's undisputed testimony that the tenants were smoking in the rental unit bathroom, contrary to their tenancy agreement and as a result the fire system sprinklers were activated, causing significant water damage to the rental unit. I find the tenants breached the Act and their tenancy agreement and this caused losses to the landlords. The landlords were able to mitigate the loss as the damage was covered under their insurance policy; however, the landlords still suffered a loss as they had to pay their insurance deductible. Therefore, I find the landlords are entitled to recover the insurance deductible in the amount of **\$2,500.00**.

I accept the landlord's undisputed testimony that the tenants caused damage to the appliances, damage to two doors by punching, damage to the mailbox lock, damage to the glass shower panel and when they left junk behind in the rental unit. I find the tenants breached section 37 of the Act when they failed to leave the rental unit undamaged. Therefore, I find the landlord is entitled to recover the cost of damages in the total amount of **\$6,233.73**.

Loss of revenue

I accept the landlord's undisputed testimony that due to the condition the rental unit was left in by the tenant's that it was not rentable until the restoration repairs were made. I find the landlord suffered a loss that was a direct result of the tenants breaching their

tenancy agreement. I do not find the time frame for repairs was unreasonable and were not within the landlord's control, as this was an insurance claim. Therefore, I find the landlord is entitled to recover loss of revenue in the amount of **\$7,000.00**.

I find that the landlord has established a total monetary claim of **\$17,247.73** comprised of the above described amounts and the \$100.00 fee paid for this application.

I order that the landlord retain the security deposit of **\$925.00** in partial satisfaction of the claim and I grant the landlord an order under section 67 of the Act for the balance due of **\$16,322.73**.

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

Conclusion

The landlord is granted a monetary order and may keep the security deposit in partial satisfaction of the claim and the landlord is granted a formal order for the balance due.

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: June 14, 2021

Residential Tenancy Branch