

Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards
Ministry of Housing and Social Development

DECISION

Dispute Codes: MND, MNSD, FF

Introduction

This hearing dealt with an application by the landlord for a monetary order and an order to retain the security deposit in partial satisfaction of the claim. Despite having been served with the notice of hearing and the application for dispute resolution by registered mail on August 22, 2008, the tenants did not attend the conference call hearing.

Central Issues

Whether the landlord is entitled to a monetary order for the 1) costs of addressing the damages, 2) administrative charges relating to this application, and 3) outstanding rents?

Whether the landlord is entitled to retain the security deposit in partial satisfaction of his claim?

Background and Evidence

On February 11, 2008, the landlord collected from the tenants a security deposit in the amount of \$700.00. On March 1, 2008, the tenants began their tenancy. A monthly rent in the amount \$1400.00 is due in advance on the first of each month. The landlord said that the tenants were late in paying the March rent.

On or about August 4, 2008, a tree fell over the property due to a wind storm. It hit the roof above the kitchen and crashed through the ceiling. Shortly after, the landlord attended the property with an insurance agent to inspect the damages. During the process, the landlord discovered a marijuana grow operation in the tenants' rental unit. The insurance agent took photos of this grow operation. Later, the landlord notified the police who investigated the allegations.

Thereafter, the landlord applied for an early end to tenancy at the Residential Tenancy Branch and an order for possession was granted on August 29. (During the hearing, the landlord referred me to the decision for file #239556 issued by the Residential Tenancy Branch.) On September 10, the landlord served the tenants with an order for immediate possession. The tenants ended their tenancy on September 20, 2008. They did not pay the September rent.

The landlord said that his insurance coverage became invalidated on the basis that illegal activities were conducted by the tenants on the property. He is therefore claiming for the costs to repair the damages incurred by the fallen tree. These damages and the costs in addressing them are as follows.

Damages and Related Costs

Labour to repair the roof	\$2500.00
Drywall materials	\$ 199.96
Metal valley	\$ 41.54
2 poly tarps and treated screws	\$ 82.29
Shingles, nails and other materials	\$1254.33
Removal of debris from roof	\$ 325.00
Rental of nailing gun	\$ 167.56
Removal of fallen tree	\$ 511.88

The landlord said that the tenants changed the lock to their entry door without his knowledge or permission and he had to change the lock again when the tenants vacated the property. He is claiming \$199.82 as costs for changing the entry door lock.

In addition to his claim for the costs to repair the damages, the landlord is also claiming for outstanding rent as of August in the amount of \$43.77, unpaid rent for September in the amount of \$1400.00, March and September late payment charges in the amount of \$50.00 and Canada post charges in the amount of \$38.99.

Analysis

The landlord said that prior to the hearing, he had sent to the Residential Tenancy Branch, a package of documents containing invoices and receipts in support of his claim. To date, I have not yet received such a package. However, during the hearing, the landlord testified in a straightforward and consistent manner. At no time did he exaggerate any of his evidence. I have therefore found him to be a credible witness and I have accepted all of his testimony as credible and trustworthy.

Based on the landlord's undisputed testimony, I find that the tenants have failed to comply with the tenancy agreement by conducting illegal activities at the rental unit. Furthermore, their non-compliance in this regard has caused the landlord's insurance coverage to become void. Therefore the landlord is entitled to recover of costs to repair the damages and other related costs that are not covered by insurance.

During the hearing, the landlord referred me to clause 10 of the tenancy agreement which stipulates the applicability of late payment charges. Therefore, I find that the landlord is also entitled to recover late payment charges in addition to the unpaid rents.

Conclusion

I find that the landlord has established a total claim of \$6815.14 comprised of \$5282.38 in damages, \$88.99 in administrative charges and \$1443.77 in unpaid rent. He is also entitled to the \$50.00 filing fee. I order that the landlord retain the security deposit and interest of \$707.46 in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of \$6157.68. This order may be filed in the Small Claims Court and enforced as an order of that Court.

Dated October 17, 2008.