

Dispute Resolution Services

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

DECISION AND REASONS

Dispute Codes: MND, FF, MNDC

Introduction

This hearing dealt with an application by the landlord, pursuant to the *Residential Tenancy Act* for a monetary order for damage to the unit and for loss of income for the month of April, pursuant to section 67. The landlord also applied for the recovery of the filing fee, pursuant to Section 72.

Both parties attended the hearing and were given full opportunity to present evidence and make submissions.

The tenancy started on January 01, 2004 and ended on March 31, 2008. The landlord filed this application against both tenants that rented the suite for the term of the tenancy. One of the tenants JN filed for protection under the Bankruptcy and Insolvency Act (R.S, 1985, c.B-3) on August 14, 2008 and therefore the landlord's claim against JN is dismissed for lack of jurisdiction.

Co-tenants are two or more tenants who rent the same property under the same tenancy agreement. The *Residential Tenancy Policy Guideline 13* states that co-tenants are jointly responsible for meeting the terms of the tenancy agreement and are also jointly and severally liable for any debts or damages relating to the tenancy.

This means that the landlord can recover the full amount of rent, utilities or any damages from both or any one of the tenants. The responsibility falls to the tenants to apportion among themselves the amount owing to the landlord.

In this application, the landlord's claim will be directed against the co-tenant RL, who will be referred to as the tenant and was represented at the hearing by JN.

The landlord stated that he served both JN and the tenant a notice of hearing package each, in person on January 30, 2009. The witnesses for the landlord both confirmed that they were present and observed the landlord handing over a package each to both JN and RL at JN's place of work.

JN stated RL was not present with her when she was served with the notice of hearing and therefore he was not served. JN has filed a letter stating that the landlord came to her workplace "*with two known crackheads to serve me the papers*". JN has also filed a notarized letter stating that the notice was delivered to her work place and a co worker "*brought them to me in my department and told me a guy had left them at Customer Service for me*".

The tenant's evidence regarding service of the notice of hearing is contradictory while the landlord's witnesses confirmed under oath that they had observed the landlord serving both tenants, with the notice of hearing.

I am satisfied that the landlord served the notice on RL and the hearing continued on in his absence.

Issues to be Decided

Is the landlord entitled to a monetary order for damages, loss of income for April and to recover the cost of filing this application?

Background and Evidence

On February 15, 2008, the tenants gave the landlord notice to end tenancy, effective March 31, 2008. After receiving the notice to end tenancy, the landlord wrote two letters requesting an opportunity to conduct an inspection of the suite. On March 30, 2008, the landlord followed up with a formal notice of final opportunity to schedule a condition inspection, written on the approved form. The landlord stated that the tenants did not respond to his written requests or his phone calls.

On April 01, 2008, the landlord used his own set of keys to enter the suite along with his witnesses. The landlord and his witnesses described the suite as messy and dirty with extensive damage to the kitchen window, bar mirror, ceilings and walls, French doors cigarette burns on the carpet, missing screens, dirty appliances and a bar fridge full of rotting meat and blood.

The landlord stated that he started repairs and clean up of the suite and advertised the availability of the suite for April 15, 2008. A new tenant moved in on May 01, 2008. The landlord has applied to recover the loss of income for the month of April and the cost incurred to repair the damaged suite and has filed receipts and photographs to support his monetary claim.

The landlord is claiming the following:

1.	Replace Kitchen window	\$610.21
2.	New mirror for Bar	\$112.00
3.	Window screen	\$41.25
4.	Glass repair on French doors	\$50.40
5.	19 burn holes on carpet	\$200.00
6.	Carpet cleaning	\$80.00
7.	Wood panel replacement	\$40.00
8.	Bar fridge repair	\$100.00
9.	Painting	\$700.00
10.	Cleaning	\$200.00
11.	Removal and disposal of garbage	\$102.00
12.	Replace locks	\$86.17
13.	Repair holes in drywall	\$150.00
14.	Replace blinds	\$71.88
15.	Loss of income for April 2009	\$775.00
	Total	\$3318.91

The tenant stated that the kitchen window has not been replaced as of March 26, 2009 and that the landlord is making a monetary claim to improve the value of his property at the tenant's expense. The tenant also stated that there was no mirror in the bar at the start of the tenancy and she covered the unfinished area with a poster. The tenant stated that the small bedroom never had a screen and she did not cause any damage to the French Doors. She admitted that she had them removed to facilitate moving furniture out of the suite and they were placed on the bedroom floor. The tenant stated that she had left the keys to the suite, on the kitchen counter.

During the hearing the tenant acknowledged that she did not clean up the suite prior to moving out. However, the tenant has filed a notarized letter which states "*I religiously cleaned the walls in the suite as well as the windows*"

The tenant stated that she did not leave garbage in the house as she had put most of her unwanted items out on the curb to be picked up by the City during the Spring Clean up week. The tenant acknowledged having left behind a bed frame, headboard and a couch.

The tenant stated that she is not responsible for the loss of income suffered by the landlord for April as she had moved on March 03, 2009 and the landlord was aware that she had moved out. She stated that the landlord followed her moving van on that date and she had called the police for assistance.

Analysis

It must be emphasized that in order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. Moreover, the applicant must satisfy each component of the test below:

Test For Damage and Loss Claims

1. Proof that the damage or loss exists,
2. Proof that this damage or loss happened solely because of the actions or neglect of the other party in violation of the *Act* or agreement

3. Verification of the actual amount required to compensate for the claimed loss or to rectify the damage.
4. Proof that the claimant followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage.

The claimant bears the burden of establishing each claim on the balance of probabilities. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. Finally the claimant must show that reasonable steps were taken to address the situation and to mitigate the damage or losses that were incurred.

Keeping the above test in mind, I will consider each of the landlord's claims in turn.

1. Replace kitchen window - \$610.21:

The landlord stated that the window consisted of an older version of a storm window which was double paned. After the tenant moved out, the window had one section of glass missing and the landlord replaced the entire window at a cost of \$610.21. The window was approximately 20 years old and as per the *Residential Tenancy Policy Guideline 37*, the estimated useful life of a window is 15 years. Since this window has outlived its useful life, I find that the landlord is not entitled to the cost of replacing the window.

2. New mirror for Bar - \$112.00:

The landlord has filed photographs and an invoice to support his claim of \$112.00 and therefore I find that the landlord is entitled to \$112.00 to replace the broken mirror.

3. Window screen - \$41.25:

The landlord has filed a receipt in the amount of \$41.25 for three screens. The tenant stated that there was only one screen missing and that it was missing since the start of the tenancy.

Since the tenant did not report the missing screen to the landlord at the start of the tenancy, I find that the landlord is entitled to the cost of replacing one bedroom screen in the amount of \$13.75.

4. Glass Repair on French Doors - \$50.40:

The landlord has filed photographs showing that the doors were placed in the bedroom and had glass damage. The tenant acknowledged having removed the doors during the move out and therefore I find that the landlord is entitled to the cost of repair in the amount of \$50.40.

5. 19 burn holes on the carpet - \$200.00:

The landlord filed evidence to verify that the carpet was replaced in January 2004 at a cost of \$729.43 which does not include installation. The tenant stated that she contributed half of the cost to replace the carpet. The landlord also filed photographs of the burns to the carpet. The estimated life of a carpet is ten years and the landlord has claimed \$200.00 towards replacing the carpet which was four years old at the end of the tenancy. I find that the landlord is entitled to \$200.00 towards the replacement of the carpet.

6. Carpet cleaning - \$80.00:

The tenant acknowledged that she did not clean the suite prior to moving out. The landlord has filed a receipt in the amount of \$80.00. I find that the landlord is entitled to \$80.00.

7. Wood panel replacement - \$40.00:

The landlord withdrew his claim for \$40.00 towards replacement of the wood panel.

8. Bar fridge repair - \$100.00:

The landlord has claimed \$100.00 towards repair of this 15 year old bar fridge. As per the *Residential Tenancy Policy Guideline 37*, the average life of a fridge is 15 years. Since this fridge has outlived its useful life, I find that the landlord is not entitled to the cost of repair.

9. Painting - \$700.00:

The landlord is claiming \$700.00 towards painting the suite. He stated that the suite was painted prior to the start of the tenancy. The tenant disagreed and stated that only part of the suite was painted and the landlord gave her the paint to finish the job. As per the *Residential Tenancy Policy Guideline 37*, a paint job will last for approximately four years. Since the tenancy lasted four years, I find that the landlord is responsible for the cost of painting the suite and therefore the landlord's claim in the amount of \$700.00 is dismissed.

10. Cleaning - \$200.00:

Based on the tenant's testimony and the photographs and receipt filed by the landlord, I find that the landlord is entitled to \$200.00 for cleaning.

11. Removal and disposal of garbage - \$102.00:

Based on the photographs and receipts filed by the landlord, I find that the landlord is entitled to \$102.00 towards garbage removal and disposal.

12. Replace locks - \$86.17:

The tenant testified that she left the keys on the kitchen counter while the landlord stated that the keys were never returned to him. In March 2009, the landlord made several attempts to contact the tenant without success. The tenant had the opportunity to return the keys in person to the landlord, but did not do so. The landlord was obliged to change the locks and I find that the landlord is entitled to \$86.17 towards this cost.

13. Repair holes in the drywall - \$150.00:

The landlord has not filed any receipts to show that he has incurred a cost of \$150.00 to repair holes in the drywall. Therefore, I find that the landlord is not entitled to this amount and his claim is dismissed.

14. Replace blinds - \$71.88:

The landlord has filed a photograph showing the draw string missing from the blind and is claiming \$71.88 to replace the blind. I find that the broken draw string is more likely than not, a result of wear and tear and therefore the landlord is not entitled to the cost of replacing the blinds.

15. Loss of income for April 2009 - \$775.00:

The tenant left the unit in a condition that it could not be rented out immediately. Even though the tenant moved out on March 03, 2008, the landlord stated that he was unable to contact the tenant through March, and finally entered the unit on April 01 2008, using his own key.

The landlord advertised the availability of the rental unit for April 15, 2008 as the suite was not ready for a new tenant prior to that date. I find that the landlord incurred a loss of income for the month of April; however I also find that the tenant is not responsible for the loss of income for the entire month. Since the landlord spent the first half of April, repairing the rental unit, I find that the tenant is responsible for the loss of income for half of April in the amount of \$387.50.

Overall, the landlord has established a claim in the amount of \$1231.82. Since the landlord has established a monetary claim, I find that he is entitled to the cost of filing this application in the amount of \$50.00.

Conclusion

I grant the landlord a monetary order under section 67 of the *Residential Tenancy Act* for the amount of **\$1281.82**. This order may be filed in the Small Claims Court and enforced as an order of that Court.

Dated April 06, 2009.

Dispute Resolution Officer