



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes MND, MNDC, (MNSD), FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord for a Monetary Order for damage to the unit, for compensation for damage or loss under the Act and a Monetary Order to recover the filing fee. The landlord has requested to amend his application to retain the tenant's security deposit. This request has been allowed.

Service of the hearing documents was done in accordance with section 89 of the *Act*, and were hand delivered to each of the tenants and served in person on July 13, 2009.

The landlord and two of the tenants appeared, gave affirmed testimony, were provided the opportunity to present their evidence orally, in written form, documentary form, to cross-examine the other party, and make submissions to me. On the basis of the solemnly affirmed evidence presented at the hearing I have determined:

Issues(s) to be Decided

- Has the landlord provided sufficient evidence that the damage is caused by actions or neglect of the tenants?
- Has the landlord provided sufficient evidence of the actual amount required to compensate him for the claimed loss or to rectify the damage?
- Is the landlord entitled to a Monetary Order for loss of income?
- Is the landlord entitled to recover filing fees from the tenants for the cost of the application?

Background and Evidence

This tenancy started on October 01, 2008. Three tenants all shared this rental property and paid rent of \$1,400.00 for the unit. Rent was due on the 1st of each month. The tenants had a six month fixed term tenancy to April 2009 which reverted to another six month fixed term to end on



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September 30, 2009. The tenants paid a security deposit of \$700.00 and a pet damage deposit of \$400.00 on October 01, 2008.

The landlord states that the unit was damaged due to a smouldering fire which broke out on April 22, 2009. Most of the damage has been caused by smoke after a table lamp that had been left on fell onto one of the tenants beds. The tenants were out of the property at the time. The landlord states that this is a two level property and the smoke damage is throughout the whole property. All the carpets have had to be replaced and the walls repainted twice. The landlord states that the insurance has covered most of this work and he has had to pay a deductible on the claim of \$2,500.00. The landlord asked the tenants for this amount and as they did not pay it, he could not pay it until June 02, 2009. Once the deductible was paid by the landlord the restoration company carried out the repairs.

The restoration company discovered some other damage which they state was caused by the tenant's animals. There were holes in the dry wall and damage to the laminate flooring caused by animal urine. The tenants kept a number of rabbits, rats and guinea pigs. The landlord had given permission for the tenants to keep two to three pets and it was discovered that they had approximately 10 pets. The cost of these repairs is \$755.95.

The landlord claims the tenants moved from the property after the fire, one tenant left on April 30, 2009 and the other two tenants left on July 01, 2009. The landlord states as the damage was caused by the tenant's actions and this was a fixed term tenancy until September 30, 2009 the tenants owe rent for July, August and September, 2009 to an amount of \$4,200.00.

The tenants do not dispute the landlord's claims. They state that the fire was caused when a lamp fell onto the bed. As they were all out at the time they could not take the required action to prevent further damage to the property. When one of the tenants returned home she alerted the fire service who arrived to deal with the fire. Two of the tenants stated at the time that as the house was damaged and they could not live there they do not have to pay rent. The female tenant did offer to pay her share of rent to the landlord but he did not take it at the time as it was unfair on her if the other two tenants did not pay. During the hearing the two tenants in attendance state that they agree they do owe this amount to the landlord.

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The tenants sent some information about the maintenance of smoke alarms in a property and statements from neighbours to determine if the smoke alarms had gone off at the start of the fire. However, there is no evidence to support the fact of whether the smoke alarms were active or not or if not whether it was the landlords fault.

The tenants have asked the landlord to reach an agreement with them after the hearing as to a payment plan for the amounts owed. One of the tenants is overseas and will be informed on his return of his share of the landlords claim.

Analysis

I have carefully considered all the evidence before me, including the affirmed evidence of the parties and witnesses. As the tenants do not dispute the fact that the fire happened due to the actions or neglect of one of the tenants I find the tenants are responsible for the damage caused by the fire. Therefore, I uphold the landlords' application to recover the insurance deductible to the amount of \$2,500.00 from the tenants.

I also find that the tenants are responsible for other damages caused to the rental unit by their pets and therefore award the landlord the amount of \$755.95 for the costs related to this repair.

I find that due to the fire the tenants moved from the property before the end of the fixed term. If the fire had occurred through no fault of either party then the tenancy would be deemed to have been frustrated and the tenant's obligations to pay the landlord rent up to the end of the tenancy would be null in void. However, as the fire was caused by the tenants I find in favor of the landlords claims for a loss of revenue for the three months to repair the damage before the suite was ready to be occupied again. If the tenants had paid the deductible to the landlord at the time when it was first requested they could have reduced the landlords request for a loss of revenue because the work to remedy the smoke damage could have started sooner. As the landlord had to find this extra money and was unable to do this until June 02, 2009 this caused the work to be started later and consequently took longer for repairs to be complete in order for the landlord to re-rent the suite.

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I also find, pursuant to Section 38 of the Act, that the landlord may retain the full security and pet damage deposits plus interest towards the total cost of repairs and loss of revenue.

As the landlord has been successful with his claim he is entitled to recover the \$100.00 filing fee for his application from the tenants in partial satisfaction of his claim. A Monetary Order has been issued for the following amount:

Insurance deductible	\$2,500.00
Loss of rental income for three months	\$4,200.00
Filing fee	\$100.00
Less security and pet damage deposit plus accrued interest	(-\$1,104.15)
Total amount due to the landlord	\$6,451.80

Conclusion

I HEREBY FIND in favor of the landlord's monetary claim. A copy of the landlord's decision will be accompanied by a Monetary Order for **\$6,451.80**. The order must be served on the respondent and is enforceable through the Provincial Court 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: October 30, 2009.

Dispute Resolution Officer