

DECISION

Dispute Codes MND, MNDC, MNSD, MNR, FF

Introduction

A substantial amount of documentary evidence, photo evidence, and written arguments has been submitted by the parties prior to the hearing. I have thoroughly reviewed all submissions.

I also gave the parties the opportunity to give their evidence orally and the parties were given the opportunity to ask questions of the other parties.

All testimony was taken under affirmation.

Issues(s) to be Decided

On the original hearing date of March 26, 2010 I made a finding that the second respondent, initials E.D., was improperly named as the respondent in this matter, as she was not a tenant under the tenancy agreement but was in fact a roommate of the tenant. I therefore have removed her name from any order issued.

The original application was a monetary claim for \$9,400.00, however the application was amended up and down numerous times before the hearing date, with the final adjusted monetary claim requested by the applicant totalling \$9,398.00 including the \$100.00 filing fee. The applicant is requesting that she be allowed to keep the full security deposit plus interest towards this claim and that an order for the difference be issued.

Background and Evidence

Portion of the claim not in dispute

The landlord has claimed \$1600.00 for November 2009 rent due to an NSF cheque and the tenant has stated that he does not dispute this claim and agrees that the \$1600.00 is owed for November 2009 rent

Disputed portion of the claim

The applicant claims that:

- As a result of tenants negligence there was a fire in the rental unit that caused extensive damage with repair costs in excess of \$50,000.00 and as a result the landlords had to pay a deductible on their insurance totalling \$2500.00.
- The problem was made worse because of the fact that the tenants had removed the smoke detector that was in the rental unit, and had emptied the fire extinguisher for the fun of it.
- The tenants have also caused some damages during the tenancy, over and above those caused by the fire, which included a broken windowpane upstairs a broken bathroom door holes in living room walls and broken kitchen cupboard doors.
- At the end of the Tennessee the tenants left an extensive amount of garbage behind which had to be removed by the landlord. There was an abandoned camper trailer full of garbage, 30 bags of garbage was removed from outdoors 20 bags of garbage was removed from the main house and 15 bags of garbage was removed from the basement. There was also a fair amount of furniture left behind that had to be removed.
- Due to changes in the building code the landlord had to pay for upgraded insulation in a portion of the attic, which was not covered by the insurance.
- She also lost rental revenue over and above the amount allowed by the insurance and had commission for re-renting, and advertising costs.

The applicant is therefore requesting a claim as follows:

November 2009 NSF cheque	\$1600.00
Lost rental revenue February 2010	\$1600.00

Lost rental revenue March 2010	\$1600.00
Insurance deductible	\$2500.00
Broken windowpane	\$50.00
Broken bathroom door	\$150.00
Holes in living room walls	\$75.00
Broken kitchen cupboard doors	\$50.00
Remove abandoned camper trailer	\$150.00
Outside garbage removal -- 30 bags	\$300.00
Inside garbage removal -- 20 bags	\$200.00
Basement garbage removal -- 10 bags	\$100.00
Labour to remove abandoned furniture and all garbage bags 15 hours at \$25 per hour	\$375.00
Commission to re-rent	\$400.00
Advertising costs	\$50.00
Insulation upgrade	\$1568.00
Filing fee	\$100.00

The respondent stated that:

- The fire was an unfortunate accident and they did what they could at the time but to try and mitigate any loss.
- He does not believe he should have to pay the high deductible, as it was not his choice to have such a high insurance deductible, that was the landlord's choice.
- There was no smoke detector installed in the House when he moved into the rental unit, although he does admit the tenancy was assigned to him of another tenant.
- He was unable to remove all the garbage prior to moving out of province, because the water and power had been disconnected to the rental unit; however

he had arranged to have the other occupants and friends complete the cleanup process.

- He admits that the cleanup process was not completed by his friends; however he believes the landlord has exaggerated the amount of cleaning required, as the photos taken by one of the other occupants show that was left much cleaner than the landlord claims.
- Some mattresses that were left behind were also there when he moved into the rental unit; however he again admitted that he at that time the tenancy was assigned to him from a previous tenant and it was not a new tenancy.
- He also believes the amounts claimed by the landlord for repairs are excessive and believes that 4 months to repair the damages in the rental unit is excessive.

The applicant therefore believes that the \$800.00 damage deposit should cover any damages and cleaning over and above those caused by the fire, and the fire damage should be covered by the landlords insurance.

Analysis

November 2009 rent an NSF fee

The tenant has admitted that this rent is outstanding and therefore I will allow the claim for the November 2009 rent an NSF fee, however the maximum NSF fee allowed under the Residential Tenancy Act is \$25.00.

Therefore the total amount I allow for November rent and NSF fee is **\$1625.00**

Lost rental revenue for February 2010 and March 2010

The fire in this rental unit occurred on November 19, 2009, and the insurance company has allowed lost rental revenue for the months of December 2009 and January 2010, and it is my decision that that should have been sufficient time to clean up the rental unit

and complete the repairs and therefore I will not allow the landlords claim for lost rental revenue for the months of February 2010 and March 2010. The landlord claims that she was delayed in starting the repairs by the tenant's failure to properly clean up the rental unit however the landlord is required to mitigate her losses and if the tenants were failing to act promptly then she should have ensured that the work was done within a reasonable timeframe to allow for the repairs to begin.

Insurance deductible

It is my finding that the fire in the rental unit was caused by negligence on the part of the occupants and therefore the tenants are liable for the deductible in the landlords insurance. I do not accept the tenant's argument that the amount of deductible is unreasonable, as this is the amount that the landlord had to pay.

I allow the landlords full claim for insurance deductible totalling **\$2500.00**

Damages caused by the tenants

the tenant does not dispute that these damages were caused during his tenancy only the amounts claimed; however is my finding that the amounts claimed by the landlord for repairs are not unreasonable and therefore I allow the full amounts claimed.

Amount allowed for damages caused by the tenants -- **\$325.00**

Removing abandoned camper trailer

It is also my decision that the amount claimed by the landlord for the removal of the abandoned camper trailer is reasonable.

Amount allowed for abandoned trailer removal -- **\$150.00**

Removal of garbage and abandoned furniture

The landlord is claiming a total of \$975.00 for removal of garbage from the rental unit and rental property however it is my decision that this amount is excessive. The tenants have provided photo evidence that has convinced me that the rental unit was left in a cleaner condition than claimed by the landlord, and therefore although I will allow a portion of the landlords claim for garbage removal, I am not convinced that the amount claimed by the landlord is justified.

The total amount I will allow for garbage removal is **\$300.00**.

Commission and advertising costs to re-rent

I deny the landlords claim for commission and advertising costs to re-rent the rental unit. The tenants were forced to vacate the rental unit due to the fire that had occurred, and since I have already ordered that they are liable for the insurance deductible, I am not willing to order anything further.

Insulation upgrade

I also deny the landlords claim for the insulation upgrade because, although I understand this is not something the landlord was planning to do, the upgrade has added value to the landlord's property.

Filing fee

I will allow **\$50.00** of the \$100.00 filing fee claimed by the landlord. I will not allow the full \$100.00, because the total amount of the claim that I have allowed is less than the \$5,000.00 amount at which the fee jumps from \$50.00 to \$100.00.

Conclusion

I have allowed \$4950.00 of the landlord's claim. I therefore order that the landlord(s) may retain the full security deposit:

\$800.00

I further Order that the Respondent(s) pay to the applicants the following amount:

\$4150.00

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: May 13, 2010.

Dispute Resolution Officer