



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes OPC, MND, MNDC, FF, O

Introduction

This hearing dealt with the landlord's Application for Dispute Resolution to obtain an order of possession and a monetary order.

The hearing was conducted via teleconference and was attended by the landlord. Neither tenant attended.

The landlord provide testimony and documentary evidence showing he served both tenants with notice of this hearing, one in person and one by registered mail. I accept that both tenants were sufficiently served with notice of this hearing.

The landlord confirmed at the outset of the hearing that the tenants moved out by June 30, 2010 making it no longer necessary to obtain an order of possession. I have amended the landlord's application to exclude this portion of the landlord's application.

Issues(s) to be Decided

The issues to be decided are whether the landlord is entitled to a monetary order for damage to the rental unit and for money owed or compensation for loss or damage under the *Residential Tenancy Act (Act)*, regulation, or tenancy agreement; and to recover the filing fee from the tenants for the cost of the Application for Dispute Resolution, pursuant to sections 67, and 72 of the *Act*.

Background and Evidence

The landlord provided the following documents as evidence:

- A copy of a tenancy agreement signed by both parties on January 22, 2010 for a 6 month fixed term tenancy beginning on February 1, 2010 for a monthly rent of \$1,700.00 due on the 1st of the month and a security of \$850.00 paid on February 1, 2010;
- A copy of a Notice of Final Opportunity to Schedule a Condition Inspection for June 30, 2010 at 7:00 p.m.;
- Copies of correspondence between the landlord and a restoration contractor and the site manager, including one email from the site manager that documents an inspection of the rental unit that concluded with the tenant threatening to break the landlord's neck;

- A condition inspection report with the move out portion dated June 30, 2010 showing the rental unit in good condition, listing some minor problems;
- Estimates for repairs to damage to the rental unit (\$11,323.92) and to the unit below (\$794.06) as a result of flooding that occurred in this rental unit;
- A copy of a written statement from the tenant below this rental unit confirming flooding from the rental unit above on April 22, 2010 at 1:30 a.m.;
- A copy of a 1 Month Notice to End Tenancy for Cause issued on June 2, 2010 with an effective vacancy date of July 1, 2010; and
- 23 photographs of the condition of the rental unit at the end of the tenancy.

The landlord has made a monetary claim as follows:

Description	Amount
End tenancy early from tenant's breach	\$1,700.00
Damage to unit loss of rent	\$1,700.00
Physical damage to rental unit	\$714.04
Flooring replacement for rental unit	\$11,323.92
Damage to unit below from flood	\$794.06
Pending strata fines	\$200.00 - \$400.00
Cost to replace non-returned storage room key	\$15.00
Hearing costs – photocopying, mailings, picture development	\$32.65
Total (maximum)	\$16,679.67

The landlord testified that as a result of his last interaction with the tenant he was intimidated by the tenant and only wanted to complete the move out condition inspection report without incident, and as such the report is not a true reflection of the condition of the rental unit at the end of the tenancy.

The landlord testified that in April a flood of this unit was caused by the tenants, he does not know precisely what happened but as a result both his floors and the unit below suffered some damage. The floors of the landlord's unit require replacement and restoration.

The landlord testified that he has re-rented the rental unit to tenants with the understanding that he will be replacing the floors as soon as possible.

Analysis

In the absence of any contradictory testimony, and confirmed by the email from the site manager, I accept the landlord had been previously threatened by the tenant and therefore intimidated during the completion of the move out inspection. I further accept the photographic evidence to be an accurate reflection of the condition of the rental unit at the end of the tenancy.

As a result, I find the tenants are responsible for the damages at the end of the tenancy and in particular for the replacement of flooring in the rental unit and for damages in the unit below resulting from the flood of April 22, 2010.

In relation to the landlord claim of \$714.04 for painting of the rental unit, I find based on the submission of his receipts the landlord only incurred a cost of \$610.00 for painting and general repairs to the rental unit. I find the landlord is entitled to his entire claim for flooring restoration and for charges to repairs for the rental unit below this unit.

As the landlord has not yet had fines levied against him for the tenant's actions in the strata unit I find the landlord's application for this amount to be premature and dismiss this portion of his application with leave to reapply in the event the strata levies a fine against him.

Residential Tenancy Policy Guideline 3 states that if a landlord elects to end a tenancy and sue the tenant for loss of rent over the balance of the term he must put the tenant on notice that he plans to make such a claim. As the landlord filed his application that included monetary compensation prior to the end of the tenancy, I accept that he put the tenant on notice of his intend to make a monetary claim for lost rent and find the landlord entitled to rent for the month of July 2010.

I do not accept the landlord has suffered any loss of rent as a result of the condition of the rental unit as the landlord has been able to rent the unit out without actually making any of the required repairs yet to the unit. I therefore dismiss this portion of the landlord's claim without leave to reapply.

I find the landlord is entitled to the charges for replacement of the storage room key as per his application. As the landlord made a choice to photocopy material, print photographs and serve evidence via registered mail I dismiss this portion of his application without leave to reapply.

Conclusion

I find that the landlord is entitled to monetary compensation pursuant to Section 67 and grant a monetary order in the amount of **\$14,542.98** comprised of \$14,442.98 compensation owed and the \$100.00 fee paid by the landlord for this application.

This order must be served on the tenants and may be filed in the Provincial Court (Small Claims) and enforced 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: August 23, 2010.

Dispute Resolution Officer