



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MND, MNSD, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord for a monetary order for unpaid rent, damage to the unit site or property, recovery of the filing fee and an order to keep all or part of the security deposit.

The Landlord provided affirmed testimony that they served Tenant MF by registered mail with the Application for Dispute Resolution and Notice of Hearing on October 28, 2011, and provided the customer receipt/tracking slip from Canada Post as evidence. I find that the Tenant was served the Application and Notice of Hearing in accordance with section 88 of the Residential Tenancy Act (the "Act").

The Tenant did not participate in the conference call hearing. The Landlord was given full opportunity to be heard, to present evidence and to make submissions.

Preliminary Matter(s)

The Landlord provided a copy of the written fixed term tenancy agreement as evidence, which names three tenants on the agreement. The Landlord stated that two of the tenants were in a relationship, and the third person on the tenancy agreement, Tenant MF, is the father of one of the tenants and a co-signer to the tenancy agreement.

Section 16 of the Act states as follows:

Start of rights and obligations under tenancy agreement

16. The rights and obligations of a landlord and tenant under a tenancy agreement take effect from the date the tenancy agreement is entered into, whether or not the tenant ever occupies the rental unit.

Tenants to a tenancy agreement are not just jointly liable, they are also severally liable. Residential Tenancy Policy Guideline 13 states:

A tenant is the person who has signed a tenancy agreement to rent residential premises.

Co-tenants are 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 all or any one of the tenants. The responsibility falls to the tenants to apportion among themselves the amount owing to the landlord.

Where co-tenants have entered into a periodic tenancy, and one tenant moves out, that tenant may be held responsible for any debt or damages relating to the tenancy until the tenancy agreement has been legally ended.

The Landlord named all three tenants on the Application, however, the Landlord stated at the hearing that only Tenant MF was able to be served with the Application, Notice of hearing, and evidence, as he was the only person on the tenancy agreement for whom the Landlord has a forwarding address. As a result, I find that it is appropriate to only name Tenant MF in this decision and in any order resulting from this decision, as he was the only Tenant properly served. The Landlord did not dispute this and agreed to proceed only against Tenant MF.

Issue(s) to be Decided

Is the Landlord entitled to a monetary order for unpaid rent, damage to the unit site or property, recovery of the filing fee and an order to keep all or part of the security deposit?

Background and Evidence

The Landlord testified that they had a written fixed term tenancy agreement with the Tenant from October 01, 2010 to September 30, 2011 with a monthly rent of \$1,750.00, plus Harmonized Sales Tax ("HST") \$31.30 due on the 1st of the month. The tenancy agreement states that a \$25.00 administration fee is payable to the Landlord for NSF cheques or late rent payment. The Landlord holds a security deposit of \$890.60 from this tenancy.

The Landlord stated that this is a residential tenancy and that the Act applies. The Landlord states that Canada Revenue Agency ("CRA") requires them to charge HST on part of the rental unit because 15% of the square footage of the rental unit may be used for a tenant's own business purposes as it is permitted by the City to use the rental unit as a live/work space.

The Landlord stated that the tenancy ended due to non-payment of rent, and a Ten Day Notice to End Tenancy was served on September 12, 2011. The rental unit was vacated on September 30, 2011. The Landlord stated that the rent was not paid for September 2011. The Landlord stated that the Tenant owes \$1,750.00 for rent for September 2011 plus \$31.30 HST.

The Landlord stated that because rent was not paid for September 2011 a \$25.00 late fee is owed by the Tenant, pursuant to the terms of the tenancy agreement.

The Landlord stated that there was damage to the rental unit from this tenancy and that the laminate wood flooring in the kitchen had significant burn marks. The Landlord provided photographic evidence of the burn marks on the flooring in the rental unit. The Landlord stated that the contractor was able to repair the burned area and replace the affected portion of the wood laminate flooring with extra pieces for a cost of \$515.20. The Landlord submitted a copy of the invoice for the flooring repair work into evidence.

The Landlord stated that they had to repaint the entire rental unit due to damage, as there were a lot of black marks on the walls, trim, baseboards, and closet doors that could not be cleaned off and there were holes in the ceiling. The Landlord stated that it cost \$1,708.00 to repair the holes and paint the rental unit to restore it to good condition. The Landlord submitted a copy of the invoice in evidence for the painting and repair work.

The Landlord stated that the rental unit was not properly cleaned and the carpets were stained and dirty when the tenancy ended. The Landlord had the rental unit and carpets cleaned at a cost of \$154.28. The Landlord stated that the cleaner billed them for three suites on the same invoice, as a result the Tenant is only responsible for one third of the bill. The Landlord submitted a copy of the invoice in evidence for the cleaning and carpet cleaning.

The Landlord stated that a mattress was dumped in the underground parking area of the building. The Landlord provided photographic evidence of the female tenant from the rental unit dumping the mattress in the underground parking of the building. The Landlord stated that the key fob issued to the rental unit matched that of the individual who entered the underground parking to dump the mattress. The Landlord stated that it cost them \$72.80 for a junk removal company to dispose of the mattress. The Landlord submitted a copy of the invoice in evidence for the mattress removal.

The Landlord claims as follows:

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|---|---|-------------------|
| a | Rent for September 2011 | \$1,750.00 |
| c | Late fee for unpaid rent | \$25.00 |
| d | Wood laminate floor repair in kitchen | \$515.20 |
| e | Painting and repairs | \$1,708.00 |
| f | Cleaning and carpet cleaning costs | \$154.28 |
| g | Junk removal for mattress | \$72.80 |
| h | Filing fee for Application | \$50.00 |
| | Total amount claimed by Landlord | \$4,306.58 |

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

Section 67 of the Residential Tenancy Act states:

Without limiting the general authority in section 62(3) [*director's authority*], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

I have reviewed the tenancy agreement and Landlord's evidence and I find that the predominant purpose of this tenancy is for residential tenancy purposes; as a result I find that the Act applies to this tenancy. I decline to accept jurisdiction over the Landlord's claim for HST in the amount of \$31.30 on the rent owing, as this relates to a portion of the tenancy agreement over which I have no jurisdiction under the Act.

I find that the Landlord suffered a loss pursuant to section 67 of the Act for the following reasons:

In a claim for damage or loss under the Regulation the Applicant (in this case the Landlord) has the burden of proof to establish his claim on the civil standard, the balance of probabilities.

To prove a loss and have the Respondent (in this case the Tenant) pay for the loss the Applicant (the Landlord) must satisfy four different elements:

1. Proof that the damage or loss exists,

2. Proof that the damage or loss occurred due to the actions or neglect of the Respondent (Tenant) in violation of the Act or agreement,
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage, and
4. Proof that the Applicant (the Landlord) followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

As part of the evidence submissions which I considered, the Landlord provided photographs of condition of the rental unit, receipts for the actual costs, and verbal testimony about condition of the rental unit and work performed.

I find that the Landlord attempted to mitigate or minimize their losses by undertaking work on the rental unit immediately after the tenancy ended so it was suitable for new tenants.

I accept the Landlord's claim for \$1,750.00 in unpaid rent for September 2011 as the evidence supports that the Landlord did not receive rent for that month and the rental unit was not vacant until the end of the month.

I accept the Landlord's claim for the \$25.00 late fee for the unpaid rent for September 2011, as the tenancy agreement identifies this late fee as owing, and the Act and Regulation allow this amount to be charged for this purpose.

I accept the Landlord's claim for the \$515.20 and I find this is a reasonable amount to repair and replace the area of wood laminate flooring that was damaged in the rental unit's kitchen. The photographic evidence clearly depicts the extent of the damage to the wood laminate flooring.

I accept the Landlord's claim for \$1,708.00 for repainting and repair of the rental unit, as a reasonable amount to perform this service. The photographic evidence depicts large holes in the ceiling of the rental unit and large black marks on the walls of the rental unit. The Landlord's testimony also described the extent of the black marks throughout the rental unit including on the closet doors, trim, and baseboards.

I accept the Landlord's claim for the cleaning and carpet cleaning costs of \$154.28 for the rental unit and I find this a reasonable amount to clean the unit. The photographic evidence clearly depicts large staining on the carpets and a very dirty oven. The Landlord's testimony also described the extent of the lack of cleaning in the rental unit.

I accept the Landlord's claim for \$72.80 for removal of the mattress by a junk removal company and I find this is a reasonable amount to perform this service. The photographic evidence depicts a mattress being placed in the underground parking of the building, and the Landlord's testimony identifies one of the individuals hauling the mattress into the underground is the female tenant named on the tenancy agreement for the rental unit.

As the Landlord has in part succeeded in their Application, I find that the Landlord is entitled to recover the \$50.00 fee for this proceeding.

The total amount the Tenant owes to the Landlord is \$4,275.28.

The Landlord holds the security deposit of \$890.60 from this tenancy. I order that the Landlord retain the security deposit, in partial satisfaction of the claim. I grant the Landlord an order under section 67 for the balance due of **\$3,384.68**.

Conclusion

I decline to accept jurisdiction over the Landlord's claim for HST.

I grant the Landlord's claim for unpaid rent for September 2011, late fee for September 2011, laminate wood floor repair, cleaning and carpet cleaning, painting and repairs, mattress removal and the filing fee.

I find that the Landlord is entitled to \$4,275.28. As I have ordered that the Landlord retain the security deposit of \$890.60, I find that the Landlord is entitled to monetary order for the balance owing pursuant to section 67 against the Tenant in the amount of **\$3,384.68**. This order must be served on the Tenant and may be filed in the Provincial Court (Small Claims).

The order accompanies the Landlord's copy of this decision.

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: January 24, 2012.

Residential Tenancy Branch