



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, FF

Introduction

This hearing was convened by way of conference call in response to the landlord's application for a Monetary Order for damage to the unit, site or property and to recover the filing fee from the tenants for the cost of this application.

Service of the hearing documents, by the landlord to two of the tenants, was done in accordance with section 89 of the *Act*, sent via registered mail on August 29, 2012. The third tenant QA has not been served by the landlord. Mail receipt numbers were provided in the landlord's documentary evidence. The tenants MM and TM are deemed to be served the hearing documents on the fifth day after they were mailed as per section 90(a) of the *Act*.

The landlord appeared, gave sworn testimony, was provided the opportunity to present evidence orally, in writing, and in documentary form. There was no appearance for the tenants that are deemed to have been served in accordance with the *Residential Tenancy Act*. All of the landlord's testimony and documentary evidence was carefully considered.

Issue(s) to be Decided

Is the landlord entitled to a Monetary Order for damage to the unit, site or property?

Background and Evidence

The landlord testifies that this tenancy started on November 01, 2011. This was a fixed term lease for three months which reverted to a month to month tenancy. The tenants vacated the rental unit on August 07, 2012. Rent for this unit was \$750.00 per month due on the 1st of each month. The tenants paid a security deposit of \$375.00 on November 03, 2011. A move in and a move out inspection was conducted and the report has been provided in evidence. A forwarding address in writing was provided on August 07, 2012.

The landlord testifies that at the end of the tenancy the tenants failed to clean the unit and the landlord hired a cleaner who cleaned the unit for 12 hours at 20.00 per hour. The landlord testifies that on the security deposit statement she had estimated a cost for this work of \$400.00; however the actual cost is \$240.00. The cleaner has provided a detailed invoice showing the hours worked and the areas cleaned.

The landlord testifies that the tenants failed to leave the carpets in a clean condition at the end of the tenancy. There was garbage left on the floors and the carpets were left stained and dirty. The landlord provided an estimate on the security deposit statement for \$95.00 plus HST and the actual cost incurred was \$112.00 as shown on the invoice.

The landlord testifies that the tenants failed to repair holes in the walls in the dining room and bedroom. The landlord had to have these holes repaired. The landlord estimated this to be \$600.00 on the security deposit statement however the actual cost was \$225.00 as shown the repair invoice.

The landlord testifies that they had to remove a quantity of garbage from the rental unit and had estimated this at \$600.00. The actual cost for the garbage removal was \$115.65 as shown on the invoice. The landlord testifies that the tenants had not returned all the keys at the end of the tenancy and although this was estimated at

\$40.00 to replace keys the landlord withdraws this section of her claim as the landlord has not provided an invoice.

The landlord testifies that the tenants did not remove all their belongings. The tenants belongs were estimated to be of a value higher than \$500.00 so the landlord has stored these belongings as specified under the Residential Tenancy Regulations. The landlord placed two advertisements in the local newspaper to inform the tenants that their belongings were in storage and that they will be sold or discarded by November 30, 2012. The landlord seeks to recover storage costs for part of August of \$117.18 and for September of \$201.60.

The landlord has provided a copy of the security deposit statement which the female tenant signed to agree to the amounts charged and estimated and the tenant agrees these sums may be deducted from the security deposit.

The landlord seeks to amend their claim to include unpaid rent for August, 2012 as the unit was left in such a bad condition that it could not be re-rented for August.

Analysis

I have carefully considered the landlords documentary evidence and sworn testimony before me. With regard to the landlords claim for damages; I have applied a test used for damage or loss claims to determine if the claimant has met the burden of proof in this matter:

- Proof that the damage or loss exists;
- Proof that this damage of loss happened solely because of the actions or neglect of the respondent in violation of the Act or agreement;
- Verification of the actual amount required to compensate for the claimed loss or to rectify the damage;

- Proof that the claimant followed S. 7(2) of the Act by taking steps to mitigate or minimize the loss or damage.

In this instance the burden of proof is on the claimant to prove the existence of the damage or loss and that it stemmed directly from a violation of the agreement or contravention of the Act on the part of the respondent. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. Finally it must be proven that the claimant did everything possible to address the situation and to mitigate the damage or losses that were incurred.

I find the landlord has provided sufficient evidence to show that the tenants did not comply with section 32 of the *Act* by leavening the rental unit in a clean condition at the end of the tenancy and by failing to make repairs to the rental unit at the end of the tenancy. I further find the tenants did not remove their garbage or all their belongings. The landlord has provided a copy of the move in and move out inspection reports, a copy of a security deposit statement signed by one of the tenants and invoices showing the actual costs to rectify the damage and compensate the landlord for cleaning, garbage removal and storage.

I further find as one of the tenants has agreed in writing that the landlord may deduct the costs incurred from the security deposit then the landlord does not need to file a claim to keep the security deposit pursuant to s.38(4)(a) of the *Act*.

The landlord requested that I consider their claim for a monetary order against the tenants for unpaid rent for August. In the absence of a formal and proper application for that issue, I declined to hear or determine that issue, as to do so, in my view, would not be in keeping with the principles of natural justice as to the requisite process and notice regarding claims in this process.

I further find the landlord is entitled to recover the \$50.00 filing fee paid for this application pursuant to s. 72(1) of the Act. Consequently, the landlord is entitled to a

Monetary Order for the following sum less the security deposit pursuant to s. 67 and 72(1) of the Act:

Cleaning	\$240.00
Carpet cleaning	\$112.00
Repair to walls	\$225.00
Garbage removal	\$115.65
Storage of tenants belongings	\$318.78
Subtotal	\$1,011.43
Plus filing fee	\$50.00
Less security deposit	(-\$375.00)
Total amount due to the landlord	\$686.43

Conclusion

I HEREBY FIND in favor of the landlord's amended monetary claim. A copy of the landlord's decision will be accompanied by a Monetary Order for **\$686.43**. The order must be served on the respondents MM and TM as these are the tenants who were served with the hearing documents. This Order 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: November 09, 2012.

Residential Tenancy Branch