



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNR, FF

Introduction

This hearing was convened by way of conference call concerning an application made by the landlord for a monetary order for damage to the unit, site or property; for a monetary order for unpaid rent or utilities; and to recover the filing fee from the tenant for the cost of the application.

The landlord attended the conference call hearing and gave affirmed testimony. However, despite being served with the Landlord's Application for Dispute Resolution and notice of hearing documents by registered mail on January 19, 2013, the tenant did not attend. The landlord provided evidentiary material prior to the commencement of the hearing to the Residential Tenancy Branch and to the tenant. Evidence provided to the Residential Tenancy Branch includes a copy of a Canada Post receipt dated January 19, 2013 which contains a tracking number, and a copy of a scanned delivery date and signature of the recipient for the registered mail package which also contains the same tracking number. The delivery document shows that the registered mail was delivered on January 22, 2013, and I find that the tenant has been served in accordance with the *Residential Tenancy Act*. The line remained open while the phone system was monitored for 10 minutes and the only participant who joined the conference call hearing was the landlord.

All evidence and testimony provided by the landlord has been reviewed and is considered in this Decision.

Issue(s) to be Decided

Has the landlord established a monetary claim as against the tenant for damage to the unit, site or property?

Has the landlord established a monetary claim as against the tenant for unpaid rent or utilities?

Background and Evidence

The landlord testified that this fixed term tenancy began on February 1, 2011 and expired on July 31, 2011, and then reverted to a month-to-month tenancy which ultimately ended in August, 2011. Rent in the amount of \$750.00 per month was payable in advance on the last day of the month for the following month. On January 19, 2011 the landlord collected a security deposit from the tenant in the amount of \$375.00 and collected a pet damage deposit from the tenant in the amount of \$200.00 on February 10, 2011. Both deposits are still held by the landlord.

The landlord further testified that the parties conducted a move-in condition inspection report on February 2, 2011, however the tenant moved out of the rental unit without any notice to the landlord and without paying any rent for the month of August, and the landlord is not sure when the tenant vacated. The landlord completed a move-out condition inspection report on September 6, 2011 without the tenant present, and testified that the tenant had abandoned the rental unit.

Prior to the commencement of the tenancy, the landlord had obtained a written guarantee from the tenant's mother respecting the payment of rent and damages, and the landlord has provided a copy for this hearing.

After the tenant had moved out of the rental unit, the landlord sued the guarantor in Small Claims Court. The Court ordered that the sum of \$2,488.82 plus court costs amounting to \$216.00 be paid by the guarantor to the landlord. The landlord testified that the Court accepted jurisdiction against the guarantor but not against the tenant. The monetary award of the Court was for \$1,666.10 for damages for drywall, painting the rental unit, repairing or replacing steel doors of the condominium complex, carpet cleaning, and carpet repairs. The award also included \$373.36 for the cost of moving debris from the rental unit and transporting it to the local landfill. The cost for the steel doors was \$506.66. The judge also ordered that \$600.00 of a rental discount that was offered to the tenant for making repairs that were never made be returned to the landlord. The Provincial Court also ordered that both the security deposit and the pet damage deposit be retained by the landlord to be set off against the \$600.00 reimbursement of the rental discount.

The landlord further testified that the strata also levied fines totalling \$450.00 against the tenant which the landlord had to pay, but the Court declined to order anything with respect to the fines because that wasn't contained in the guarantee. The landlord claims that amount as against the tenant, and has provided copies of 3 letters issued to the occupant of the rental unit. The notices show circles around 3 contraventions, and

states that the fine amount is \$50.00 for each contravention. The letters were issued in June, July and August, 2011 and all contain the rental unit number. The landlord testified that the first letter has 3 contraventions circled, and that letter amounts to \$150.00 in fines. The landlord was permitted to provide a copy of the receipts for the strata fines after the hearing had concluded. The same applies to the other 2 notices. The landlord claims \$450.00 in unpaid strata fines as against the tenant. The landlord did not provide copies of receipts to establish the amount of the fines paid, but provided a copy of the bylaws which states that the Strata Corporation may fine an owner or a tenant \$200.00 for each contravention of a bylaw, and \$50.00 for each contravention of a rule. The landlord also provided a copy of a letter which appears to be signed by the tenant and takes full responsibility for the fines, but does not indicate an amount or the number of contraventions the tenant takes responsibility for.

The rental unit was re-rented on September 28, 2011, and the landlord claims unpaid rent in the amount of \$750.00 for the month of August as well as \$750.00 for the month of September, 2011. No explanation was provided of why the Court did not deal with those claims when rent was contained in the guarantee, and no evidence of advertising the rental unit has been provided. The landlord testified to hearing rumors that the tenant had moved out but the landlord didn't attend the rental unit until September 3, 2011.

The landlord was also permitted to provide a copy of the tenancy agreement after the hearing had concluded. The tenancy agreement contains an addendum, and of particular notice is paragraph 4 which states as follows:

“4. In lieu of a reduction in rent for Unit 303 as follows:

Feb 1/11 - \$750.00
Mar 1/11 - \$750.00
Apr 1/11 - \$750.00
May 1/11 - \$750.00
Jun 1/11 - \$750.00
July 1/11 - \$750.00

It is agreed that (the tenant) will complete the following jobs within the unit:

- Install 5 interior doors
- Install 2 sets of bi-fold doors
- Install baseboard in master bedroom and closet area and baseboard in the spare bedroom.

It is agreed that the landlord will supply all materials required to complete the jobs and the jobs will be completed by April 30/11.”

No evidence of the damages claimed in Small Claims Court has been provided, and the landlord testified that the Court ordered the majority of the landlord's claim for damages.

Analysis

In order to be successful in a claim for damages, the onus is on the claiming party to satisfy the 4-part test for damages:

1. That the damage or loss exists;
2. That the damage or loss exists as a result of the other party's failure to comply with the *Act* or the tenancy agreement;
3. The amount of such damage or loss; and
4. What efforts the claiming party made to reduce such damage or loss.

In this case, the landlord has obtained a judgment against the guarantor for a certain amount of money. It is presumed that the landlord proved the damages to the Court, but the landlord has not provided any evidence with respect to damages that the Court did not award. Therefore, I find that the landlord has failed to establish any of the elements of the test for damages for the remainder of the landlord's damage claims that were not ordered by the Court.

With respect to the claim for unpaid rent, the *Residential Tenancy Act* requires a party who makes a claim to do whatever is reasonable to minimize the damage or loss. The landlord testified that the tenant abandoned the rental unit without paying rent for August. The landlord also testified that the rental unit was re-rented on September 28, 2011, however, no explanation was provided of why the Court did not deal with those claims when rent was contained in the guarantee, and no evidence of advertising the rental unit has been provided. The landlord testified to hearing rumors that the tenant had moved out but the landlord didn't attend the rental unit until September 3, 2011, and I have no information before me of how or when the landlord advertised the rental unit. Therefore, I find that the landlord has failed to establish that the landlord is entitled to a monetary order for additional rent from the tenant that was not ordered by the Court.

With respect to the landlord's claim for unpaid strata fines, I have reviewed the documentation provided by the landlord, and I find that the landlord has established a claim in the amount of \$450.00. The notices are dated June 2, 2011, July, 2011 and August 8, 2011 and each has circles around 3 contraventions, all of which are:

- Causing a nuisance or hazard to another person;
- Causing unreasonable noise; and
- Unreasonably interfering with the rights of other persons.

The notices also contain a circle around “\$50.00 for each contravention of a rule.”

In summary, I find that the landlord has established a monetary claim as against the tenant in the amount of \$450.00 for strata fines, and the balance of the landlord’s claim is hereby dismissed without leave to reapply.

Since the landlord has been partially successful with the application, the landlord is also entitled to recovery of the \$50.00 filing fee for the cost of filing the application.

Conclusion

For the reasons set out above, I hereby grant a monetary order in favour of the landlord pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$500.00.

This order is final and binding on the parties and may be enforced.

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 08, 2013

Residential Tenancy Branch

