



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

Decision

Dispute Codes: MNR, MNDC, MNSD, MND, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord for a monetary order for rental arrears, utilities, fence repairs, failure to return keys, cleaning and repairs to the suite and loss of rent.

The landlord appeared but neither co-tenant appeared. The landlord testified that the tenants were served by registered mail and had submitted proof of service by providing the tracking number from Canada Post.

Preliminary Matter

The landlord testified that they sent one registered mail package addressed to both co-tenants.

Sections 88 and 89 of the Act determine the method of service for documents. The landlord has applied for a Monetary Order which requires that the landlord serve the tenants as set out under Section 89(1).

In addition the Residential Tenancy Rules of Procedure, Rule 3.1, states that the applicant must serve **each respondent** with a copy of the Application for Dispute Resolution, along with copies of all of the following: a) the notice of dispute resolution proceeding letter provided to the applicant by the Residential Tenancy Branch; b) the dispute resolution proceeding information package provided by the Residential Tenancy Branch; c) the details of any monetary claim being made, and d) any other evidence accepted by the Residential Tenancy Branch with the application or that is available to be served.

In this case, by addressing the mail to more than one party and sending a single package by registered mail to both of the tenants, I find that the manner of service was not compliant with the Act nor the Rules of Procedure. However, the landlord testified that Canada Post confirmed that the hearing package was picked up by the male tenant and records confirmed that the package was received.

Accordingly, I find that the male tenant was duly served with the Notice of Hearing and evidence. I find that the other co-tenant was not served and therefore the matter will only proceed against the tenant who was found to be served. Despite being served by registered mail sent on March 4, 2013, the respondent did not appear.

Issue(s) to be Decided

Is the landlord entitled to monetary compensation for rental arrears, utilities owed, cleaning and repairs and other damages including loss of revenue?

Background and Evidence

The tenancy began in July 30, 2012 as a one-year fixed term and rent was \$750.00. A security deposit of \$375.00 was paid. A copy of the tenancy agreement was submitted into evidence. The tenancy was terminated by the landlord through a One Month Notice to End Tenancy for Cause, effective March 31, 2013. The landlord testified that the tenant vacated on February 8, 2013 without paying the rent for February. The landlord is claiming \$750.00 for arrears for the month of February.

The landlord testified that, because the tenant moved out without notice before the March 31, 2013 end date, the landlord was not able to re-rent the unit during the month of March 2013 and incurred a loss of \$750.00 which is being claimed.

In addition to the above, the landlord is claiming \$75.00 for hydro used during January 2013, and \$20.00 for hydro used during the portion of February 2013, while the tenant still occupied the unit.

Other monetary claims by the landlord include \$45.00 for fence destruction perpetrated by the tenant, \$5.00 for failure to return the keys, and \$150.00 for interior cleaning and repairs including repainting due to smoking inside the unit, replacing broken base board and fixing closet doors. No copies of invoices or details were submitted into evidence with respect to the costs of the cleaning or repairs.

The landlord submitted copies of the move-in and move-out condition inspection reports and a copy of a "Notice of Final Opportunity to Schedule a Condition Inspection" form that proposed February 15, 2013 as the date for the move-out condition Inspection. The landlord testified that the tenant did not respond.

Analysis

With respect to the rent owed, I find that section 26 of the Act states that rent must be paid when it is due, under the tenancy agreement, whether or not the landlord complies with the Act, the regulations or the tenancy agreement. Accordingly I find that the tenant must compensate the landlord for rental arrears in the amount of \$750.00.

I accept the landlord's testimony that the tenant owes \$75.00 for utilities for the month of January 2013 and \$20.00 utility costs for February 2013.

With respect to the landlord's claim for the loss of revenue for the month of March 2013, I find that a Applicant's right to claim damages from another party is dealt with under section 7 of the Act which states that if a landlord or tenant does not comply with the Act, the regulations or the tenancy agreement, the non-complying party must compensate the other for damage or loss that results. Section 67 of the Act grants an Arbitrator the authority to determine the amount and to order payment under these circumstances.

In a claim for damage or loss under the Act, the party making the claim bears the burden of proof and the evidence furnished by the applicant must satisfy each component of the test below:

Test For Damage and Loss Claims

1. Proof that the damage or loss exists,
2. Proof that this damage or loss happened solely because of the actions or neglect of the Respondent in violation of the Act or agreement,
3. Verification of the actual amount required to compensate for the claimed loss or to rectify the damage, and
4. Proof that the claimant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage.

In this instance, I find that the landlord is required to prove the existence and value of the damage or loss stemming directly from a violation of the agreement or a contravention of the Act by the respondent and to verify that a reasonable attempt was made to mitigate the damage or losses incurred.

I find that the landlord chose to terminate the fixed term tenancy early, effective March 31, 2013 and the tenant did not dispute the Notice. However, the tenant vacated earlier than the effective date of the Notice and the landlord incurred a loss of \$750.00 revenue for the month of March 2013 due to the tenant's sudden departure.

Accordingly, I find that the claim for loss of revenue meets all elements of the test for damages and the landlord is entitled to be compensated \$750.00 for the loss.

In regard to the landlord's claims for cleaning and repairs to the interior and the damaged fence, I find that section 37(2) of the Act states that, when a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged

except for reasonable wear and tear and return the keys. In this instance, I find that the tenant did not comply with section 37 of the Act. However, I find that the landlord failed to supply sufficient details with respect to the actual costs of the materials and labour to satisfy element 3 of the test for damages.

That being said, I do accept that the unit was not left reasonably clean and undamaged by the tenant. Therefore, I will grant the landlord a total of \$100.00 for a portion of the claim for cleaning and repairs. I also grant the landlord \$5.00 for the tenant's failure to return the keys.

Given the above, I find that the landlord has established total monetary entitlement of \$1,750.00, comprised of \$750.00 rental arrears, \$750.00 loss of revenue, \$95.00 for utilities, 100.00 for cleaning and repairs, \$5.00 for failure to return the keys and the \$50.00 paid for this application.

I order that the landlord retain the tenant's security deposit of \$375.00 in partial satisfaction of the claim, leaving a balance of \$1,375.00 in favour of the landlord. The remainder of the landlord's application is dismissed without leave.

I hereby grant the Landlord an order under section 67 for \$1,375.00. This order must be served on the Respondent and may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

Conclusion

The landlord is partly successful in the application and is granted a Monetary Order for rental and utility arrears, loss of revenue and damages for cleaning, repairs and failure to return the keys.

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 27, 2013

Residential Tenancy Branch

