



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Downtown Suites Ltd
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MND, MNR, MNDC, FF

Introduction

This hearing dealt with the landlord's Application for Dispute Resolution seeking a monetary order.

The hearing was conducted via teleconference and was attended by the landlord and the male tenant.

While the female tenant did not attend the hearing the male tenant testified that the female tenant was aware of the hearing and she had told him that she would be attending the hearing.

During the hearing the male tenant acknowledged that, as outlined in a Dispute Resolution Decision dated September 28, 2012 between these parties, he understood that despite moving out of the rental unit in April 2012, he had not been removed from the tenancy agreement and as such he was still obligated to fulfil all of the obligations of a tenant.

The landlord was not willing to amend their Application to remove the male tenant's name as a respondent but I advised both parties I would consider whether or not the tenant still had obligations as a tenant as it relates to this claim.

I note that the Decision of September 28, 2012 states: "As noted, the male tenant stated and the landlord concurred that he had left the tenancy in mid April 2012." The male tenant testified that he had provided the landlord with a letter in September 2012 stating that he was no longer living in the rental unit but that he received no response from the landlord.

As both the male and female tenant entered into the tenancy agreement together and when they moved in a move in condition inspection was completed the landlord has a record of the condition of the unit at that time. However, as the tenant was not removed from the tenancy agreement when he moved out in April 2012 and as a condition inspection report was not completed when the male tenant did move out there is no record of the condition of the unit when the male moved out.

I find that if I were to order the tenant be removed as a respondent the landlord would have no ability to determine whether the damage they are now claiming for was caused prior to the male tenant's departure from the unit and solely, then, the responsibility of the female tenant. As such, I find both the male and the female tenant are responsible for the condition of the rental unit when possession transferred back to the landlord.

Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to a monetary order for lost rent; for damage to the rental unit; and to recover the filing fee from the tenants for the cost of the Application for Dispute Resolution, pursuant to Sections 37, 67, and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The parties agree the tenancy began on September 1, 2011 as a 1 year fixed term tenancy that converted to a month to month tenancy on September 1, 2012 for a monthly rent of \$1,500.00 due on the 1st of each month. The parties agree the tenancy ended on October 10, 2012.

While the parties agree that a security deposit of \$750.00 and a pet damage deposit of \$750.00 were paid at the start of the tenancy they were both dealt with in the above noted Decision of September 28, 2012.

Despite not living in the rental unit since April 2012 the male tenant attended the previous hearing that led to the September 28, 2012 decision and attended to clean and repair some aspects of the rental unit and the move out condition inspection on October 10, 2012.

The landlord provided a copy of the Condition Inspection Report in which the male tenant agreed to the condition as recorded in the report that specifically stated the tenant agreed granite countertop was broken, suite and carpet cleaning was required, keys and fobs, door handle replacement and locksmith fees were required.

The landlord has provided documentary evidence to establish the value of the items claimed that the tenant acknowledged in the Report as follows:

Description	Amount
Replacement fobs	\$200.00
Carpet cleaning	\$235.20
Unit cleaning	\$509.60
Locksmith charges	\$218.40
New unit door handle	\$89.60
Countertop replacement, including plumbing costs to install kitchen sink	\$2,401.80
Total	\$3,654.60

The landlord also seeks lost rent for the month of October 2012 in the amount of \$1,500.00 and for the period of November 1 – 14, 2013 in the amount of \$750.00 as the unit was re-rented to new tenants effective November 15, 2013.

Analysis

To be successful in a claim for compensation for damage or loss the applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
3. The value of the damage or loss; **and**
4. Steps taken, if any, to mitigate the damage or loss.

Section 37 of the *Act* requires a tenant who is vacating a rental unit to leave the unit reasonably clean, and undamaged except for reasonable wear and tear, and give the landlord all keys or other means of access that are in the possession and control of the tenant and that allow access to and within the residential property.

Based on the testimony of both parties and the landlord's documentary evidence I accept the tenants failed to fulfil their obligations under Section 37 and as a result the landlord has suffered a loss for cleaning and repairs. Based on the receipts submitted by the landlord I find the landlord has established the value of that loss at \$3,654.60.

As to the landlord's claim for lost rent, I find that since the fixed term had ended on August 31, 2012 and the tenancy converted to a month to month tenancy on September 1, 2013 that the landlord is not entitled to the payment of rent for the month of October or any portion of November. Rather the landlord would be entitled to a per diem amount for the tenants overholding the rental unit until October 10, 2012.

In this case, however, I find that the nature of the damage to the rental unit, specifically the requirement to replace the granite countertop and the length of time that would take would render the unit uninhabitable until it was replaced. As such, I grant the landlord the equivalent of rent for the entire month of October 2012. I dismiss the landlord's claim for any portion of lost rent for November for the reason noted above.

Conclusion

I find the landlord is entitled to monetary compensation pursuant to Section 67 and grant a monetary order in the amount of **\$5,254.60** comprised of \$3654.60 for repairs and cleaning; \$1,500.00 for lost revenue and the \$100.00 fee paid by the landlord for this application.

This order must be served on the tenants. If the tenants fail to comply with this order the landlord may file the order in the Provincial Court (Small Claims) and be 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: June 26, 2013

Residential Tenancy Branch