



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes 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.

The landlord provided documentary evidence the tenants were served with the notice of hearing documents and this Application for Dispute Resolution, pursuant to Section 59(3) of the *Residential Tenancy Act (Act)* by registered mail on March 26, 2013 in accordance with Section 89. As per Section 90, the documents are deemed received by the tenants on the 5th day after it was mailed.

I note the landlord served the tenants at two separate addresses that they had provided as forwarding addresses. The landlord testified, and provided documentary evidence confirming, that the packages sent to one address were returned because the address provided by the tenants was non-existent. The second set of packages was returned as unclaimed.

The landlord provided evidence confirming that he also sent the hearing documents and his evidence to the female tenant via email and that she had received them through that format.

Based on the testimony and evidence of the landlord, I find that the tenants have been sufficiently served with the documents pursuant to the *Act*. I also find that the tenant's took deliberate action to avoid traditional methods of service and as such, I order the landlord has authority to serve the tenants through email.

Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to a monetary order for lost rent; for compensation for damage to the rental unit and cleaning; and to recover the filing fee from the tenants for the cost of the Application for Dispute Resolution, pursuant to Sections 37, 38, 67, and 72 of the *Act*.

Background and Evidence

The landlord provided the following documents into evidence:

- A copy of a tenancy agreement signed by the parties on December 17, 2012 for a 6 month and 8 day fixed term tenancy agreement for the monthly rent of \$1280.00 due on the 1st of each month with a security deposit of \$640.00 paid. The agreement stipulates that there is to be no smoking of any substances in the apartment or on the balconies and that \$35.00 of the rent goes towards utility costs;
- A copy of a Mutual Agreement to End Tenancy signed by the parties on March 7, 2013 to end the tenancy by March 15, 2013;
- A copy of an Agreement to refund the March rent signed by the parties on March 7, 2013 outlining a number of terms for the tenants to comply with so that the landlord will “refund the rent paid for the month of February 2013 minus costs and damages that exceed the damage deposit.” The agreement stipulates that if the costs and damages exceed the deposit the landlord will deduct these amounts from the security deposit and rent refund; and
- A copy of a Condition Inspection Report completed recording the condition of the rental unit at both move in and move out and includes an inventory list.

The landlord seeks the following compensation:

Descriptions	Amount
Fire Alarm	\$296.80
Pool Door damage	\$144.48
Rug cleaning (due to smoking)	\$144.14
Seat cushion repair	\$56.00
Electrical	\$31.29
Smoke Abatement costs (cleaning/painting supplies)	\$541.70
Smoke Abatement labour (122 hours @ \$19.62 per hour)	\$2,393.64
Replacement Keys	\$65.91
Lost Revenue	\$1,280.00
Postage Costs	\$43.59
Sub-Total	\$4,997.55
Less – Security Deposit	\$640.00
Less – One Month Rent Refund	\$1,280.00
Total	\$3,077.55

The landlord explained the lost revenue section of his claim is in regard to the length of time it took to repair and clean the rental unit to prepare it to be able to rent it again after the end of the tenancy.

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 undisputed documentary evidence, including the Condition Inspection Reports and the correspondence between the landlord and tenants, I find the landlord has established he has suffered damage and loss as a result of the tenant's breach of the no smoking term in the tenancy agreement and their obligations under Section 37.

I find the landlord has established the value of that damage and loss through the provision of receipts and invoices for all services and products required to remedy the condition of the rental unit. As such, I find the landlord has established his claim in full with one exception.

The exception is the landlord's claim for registered mailing costs in the amount of \$43.59. I dismiss this portion of his claim because it is a cost associated with pursuing his claim against the tenants and not recoverable under the *Act*.

In addition, because the lost revenue claimed by the landlord is related to the time it took to repair the rental unit and not lost revenue related to ending of the tenancy prior to the end of the fixed term, I find the landlord is entitled to recovery of this loss.

I also accept that the landlord had agreed with the tenants to reduce his claim by the amount of the security deposit and one month's rent.

Conclusion

I find the landlord is entitled to monetary compensation pursuant to Section 67 and grant a monetary order in the amount of **\$3,123.96** comprised of \$3,023.96 compensation as outlined in the above table less the postage charges 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 14, 2013

Residential Tenancy Branch