



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Nacel Properties Ltd
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MND, MNR, MNDC, MNSD, FF

Introduction

This hearing was convened by way of conference call concerning an application made by the landlord for a monetary order for unpaid rent or utilities; for damage to the unit, site or property; for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; for an order permitting the landlord to keep all or part of the pet damage deposit or security deposit; and to recover the filing fee from the tenants for the cost of the application.

An agent for the landlord company attended the conference call hearing however, despite being served with the Landlord's Application for Dispute Resolution, notice of hearing and evidentiary material, neither of the tenants attended. The landlord's agent provided evidence of having served each of the named tenants individually by registered mail on April 24, 2013, which was collected by another party and subsequently returned to the landlord. The landlord's agent also provided a copy of a letter written by the tenants which contains a forwarding address for the tenants, and the evidence shows that the landlord has served the tenants at the forwarding address provided.

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's agent.

In the circumstances, I find that the tenants have been served in accordance with the *Residential Tenancy Act*.

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

Issue(s) to be Decided

- Has the landlord established a monetary claim as against the tenants for unpaid rent or utilities?
- Has the landlord established a monetary claim as against the tenants for damage to the unit, site or property?
- Has the landlord established a monetary claim as against the tenants for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement?
- Is the landlord entitled to keep all or part of the pet damage deposit or security deposit in full or partial satisfaction of the claim?

Background and Evidence

The landlord's agent testified that this fixed term tenancy began on April 1, 2012 and was to expire on September 30, 2012 however the tenants moved from the rental unit on December 6, 2012. A copy of the tenancy agreement was provided for this hearing and it contains the name and signature of only one of the 2 named tenants. The landlord's agent testified that the tenant named is the father of the other named adult tenant, who was actually an occupant. Also, the tenancy agreement is silent with respect to the year that the fixed term tenancy expires.

The landlord's agent further testified that rent in the amount of \$960.00 per month was payable in advance on the 1st day of each month, and the tenancy agreement provides for a late payment fee in the amount of \$25.00 as well as a \$25.00 fee for N.S.F. cheques or the charge by the landlord's bank, whichever is greater. At the outset of the tenancy the landlord collected a security deposit from the tenant in the amount of \$475.00 which is still held in trust by the landlord.

A move-in condition inspection report was completed by the landlord's agent and the tenant on April 1, 2012, however the move-out condition inspection report was completed without the tenant present on December 6, 2012. The landlord's agent testified that the tenants had abandoned the rental unit and provided a copy of a letter the landlord received from the tenant dated November 29, 2012 stating that the tenants had to vacate the rental unit as soon as possible as told by the RCMP. The notice also contains a forwarding address for the tenants and a request for return of the security deposit. The landlord's agent attended the rental unit on December 2, 2012 and the

tenants were not there so the landlord asked neighbours if they had seen the tenants, to which they responded that they had not.

The landlord responded to the tenants' notice in writing on December 3, 2012 and provided a copy acknowledging receipt of the tenants' notice on November 29, 2012 and advising that a full month's notice is required so the tenants are responsible for the next month's rent.

The landlord placed a Notice to Inspect the rental unit on the door and returned on December 6, 2012 finding the rental unit unoccupied but numerous items left behind that were of no value and appeared to be unwanted. Photographs were provided for this hearing to corroborate the testimony. Debris and miscellaneous items appear to be scattered everywhere throughout the rental unit and food left in the fridge.

The landlord claims unpaid rent in the amount of \$1,060.00, \$85.00 for carpet cleaning, \$180.00 for cleaning and cleaning supplies, and \$135.00 for furniture and debris removal. A copy of a "Service Request" has been provided showing a date of 9/12/12 and containing the name of the tenant and suite number of the rental unit, for furniture removal \$135.00; Labour \$150.00; and cleaning supplies \$30.00. No receipt for carpet cleaning has been provided.

Analysis

Firstly, I have reviewed the tenancy agreement and it is clear that only one of the tenants has entered into the contract and the other tenant, admitted by the landlord's agent, was an occupant. Therefore, I dismiss the landlord's claim with respect to that tenant.

With respect to the claim for unpaid rent, I am satisfied that the other tenant did not provide the landlord with a month's notice as required by the *Residential Tenancy Act*. I find that the landlord is entitled to one month's rent from the tenant in the amount of \$960.00.

However, I am not satisfied as to the date that the landlord's agent testified that the tenancy ended. The testimony is that the tenancy ended on December 6, 2012 and the landlord's agent provided a letter to the tenants on December 3, 2012. The letter acknowledges receiving the tenant's letter on November 29, 2012 which also contained a request for return of the security deposit and a forwarding address. There is no evidence or testimony that the tenant ever received that letter or that the tenant

remained in the rental unit beyond November 29, 2012. The tenant's letter states that the RCMP told them they had to move out as soon as possible, and judging by the amount of items left in the rental unit, and considering the testimony that neighbours advised the landlord's agent on December 2, 2012 that the tenants had not been seen, I find that it was abandoned except for any valuable belongings, on November 29, 2012. There is no further correspondence from the tenant and no evidence that the tenancy went beyond that date.

A landlord is required under the *Act* to return a security deposit to a tenant within 15 days of the later of the date the tenancy ends or the date the landlord receives the tenant's forwarding address in writing, or apply to keep the security deposit within that 15 days, or the landlord is required to re-pay double the amount of the security deposit. In this case, I find that the landlord received the tenant's forwarding address in writing on November 29, 2012, and having found that the tenancy ended on that date, I find that the landlord had until December 14, 2012 to make the application to keep the security deposit. The landlord's application was filed on April 22, 2013, well beyond the time provided under the *Act*. I therefore order that double the amount of the security deposit, or \$950.00 be set off from the amount owed by the tenant.

With respect to the landlord's claim for cleaning, removal of unwanted items and cleaning supplies, I am satisfied that the landlord has established the claim. The photographs speak for themselves, and I find that the landlord is entitled to recover those costs.

In summary, I find that the landlord has established a claim as against one tenant only, in the amount of \$960.00 for unpaid rent, for furniture removal \$135.00; labour \$150.00; and cleaning supplies \$30.00. The landlord has not provided evidence of the cost of carpet cleaning, however I am satisfied, due to the condition of the rental unit as evidenced by the photographs and the condition inspection reports, that the claim of \$85.00 is reasonable, for a total monetary amount of \$1,360.00. Since the landlord has been successful with the application, the landlord is also entitled to recovery of the \$50.00 filing fee for the cost of the application. I order that double the amount of the security deposit be set off from that claim, and I grant the landlord a monetary order for the difference in the amount of \$460.00.

Conclusion

For the reasons set out above, the landlord's application with respect to the second named tenant, SW is hereby dismissed without leave to reapply.

I hereby order the landlord to keep the security deposit and I grant the landlord a monetary order as against the first named tenant, JD, in the amount of \$460.00 pursuant to Section 67 of the *Residential Tenancy Act*.

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: July 22, 2013

Residential Tenancy Branch

