



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNDC, FF

Introduction

This hearing was convened by way of conference call in response to the landlords' application for a Monetary Order for damage to the unit, site or property; for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement; and to recover the filing fee from the tenant for the cost of this application.

On May 02, 2013 the landlords applied for and received a Substitute Service Order to allow the landlords to serve the tenant care of the tenant's father at the tenant's father's address. Service of the hearing documents, by the landlord to the tenant, was done in accordance with this Substitute Service Order pursuant to s. 71 of the *Act*; The Documents were served by registered mail on May 03, 2013. Canada Post tracking numbers were provided by the landlords in documentary evidence. The tenant was deemed to be served the hearing documents on the fifth day after they were mailed as per section 90(a) of the *Act*.

One of the landlords appeared, gave sworn testimony, was provided the opportunity to present evidence orally, in writing, and in documentary form. There was no appearance for the tenant, despite being served notice of this hearing in accordance with the *Residential Tenancy Act*. All of the testimony and documentary evidence was carefully considered.

Issue(s) to be Decided

- Are the landlords entitled to a Monetary Order for damage to the unit, site or property?
- Are the landlords entitled to a Monetary Order for money owed or compensation for damage or loss?

Background and Evidence

The landlord testifies that there were two tenants named on the tenancy agreement. One of the tenants has since moved overseas and no forwarding address has been provided. The remaining tenant named on this application was a co-tenant for a fixed term tenancy starting on August 01, 2012 and was not due to end until January 31, 2013. Rent for this unit was \$2,050.00 per month due on the first of each month. The tenants were evicted after the landlords applied for a Direct Request Proceeding which took place on September 19, 2012. The landlords were successful with their application and an Order of Possession was issued effective two days after service upon the tenants. The landlords also received a Monetary Order for unpaid rent for September, 2012.

The landlord testifies that the tenant and occupants did not move out within two days after the Notice was served upon them on September 21, 2012. The Order was enforced and a Writ of Possession was issued to the landlords. The Bailiffs were called in to evict the tenant and the tenant and occupants were removed from the unit on September 27, 2012.

The landlord testifies that as the tenants overheld in the unit for four days in September after they were served with the Order of Possession the landlords seek to recover four days of rent to a sum of \$273.33.

The landlord testifies that the unit was re-rented for October 01, 2012 at a lower rent of \$1,960.00 per month. The landlords seek to recover the difference of \$90.00 in the rent for the remaining four months of the fixed term of the tenancy to a sum of \$360.00.

The landlords also seek to recover the costs incurred in evicting the tenants. The landlord testifies that they paid:

\$40.00 to swear an affidavit for Supreme Court

\$80.00 for the Writ of Possession

\$1,184.62 for the cost of the Bailiffs plus HST.

The landlord testifies that they incurred further costs due to the tenant's actions. When the bailiffs were in the process of evicting the tenants the tenant named on the application was seen entering the buildings parking lot in another person's car. The tenant or the tenant's friend was seen spilling oil deliberately in the parking lot. The landlords have been fined \$100.00 by the Strata to have this oil cleaned up. A bylaw infraction letter has been provided in evidence along with a receipt for \$100.00.

The tenant had allowed extra occupants in the rental unit and due to this the landlords felt it would be better to have the locks changed in case extra keys had been cut for these occupants and not returned to the landlords at the end of the tenancy. The landlords therefore seek to recover \$60.00 to have the locks changed however the landlord testifies that as they paid cash no receipt was provided for this work.

The landlord testifies that the tenants agreed that the bailiffs could put their belongings outside the building in the fire lane and the tenant would return and remove these items. The tenant failed to remove these items which the landlord describes as mostly junk and the Strata informed the landlords that they must remove the tenant's belongings. The landlord paid a junk removal company to assist in the removal of the tenant's belongings and the landlords seek to recover the cost incurred of \$128.80. A receipt has been provided in evidence.

The landlords also seek to recover the costs incurred of \$21.37 to send registered mail to the tenant.

Analysis

I have carefully considered all the undisputed evidence before me, including the sworn testimony of the landlord attending. I refer the parties to the Residential Tenancy Policy Guidelines # 13 which deals with the rights and responsibilities of Co-tenants. This guideline states, in part, that Co-tenants are two or more tenants who rent the same property under the same tenancy agreement. Co-tenants are jointly responsible for meeting the terms of the tenancy agreement. Co-tenants are jointly and severally liable for any debts or damages relating to the tenancy. This means that the landlord can recover the full amount of rent, utilities or any damages from all or any one of the tenants. The responsibility falls to the tenants to apportion among themselves the amount owing to the landlord.

With this in mind I find the landlords have applied against only one of the tenants and as such that tenant will be named on any Orders made.

With regard to the landlords claim for money owed or compensation for damage or loss; when a tenant is served an Order of Possession by the landlord then the tenant must relinquish possession of the rental unit to the landlord two days after the tenant was served. As the tenant failed to do so the landlord is entitled to recover any costs incurred in enforcing the Order of Possession. Consequently I am satisfied with the evidence before me that the tenant failed to move out and the landlord incurred costs to swear the affidavit in Supreme Court, cost to obtain the Writ of Possession and costs to engage the bailiffs. I therefore uphold the landlords claim for **\$1,284.62**.

With regard to the landlords claim for rent for four days of overholding in the unit after the Order of Possession was served. As the landlord received a Monetary Order for unpaid rent for the whole of September at the Direct Request Proceeding then that

matter has already been dealt with and cannot be heard again. A landlord is not entitled to any further rent for four days in September. This section of the landlords claim is therefore dismissed without leave to reapply.

With regard to the landlords claim for a loss of rent for four months of \$90.00 per month to a total sum of \$360.00; Damages awarded are an amount sufficient to put the landlord in the same position as if the tenants had not breached the agreement. As a general rule this includes compensating the landlords for any loss of rent up to the earliest time that the tenants could legally have ended the tenancy. This may include compensating the landlords for the difference between what they would have received from the defaulting tenants and what they were able to re-rent the premises for the balance of the un-expired term of the tenancy. As the unit was rented for \$90.00 less than the tenants' agreement then the landlords are entitled to recover this from the defaulting tenants for the remainder of the term of the tenancy of four months to a total sum of **\$360.00**.

With regards to the landlords claim for damages; I am satisfied from the undisputed testimony and evidence before me that the tenant or a person permitted on the property by the tenant spilt oil in the parking area of the building. I am further satisfied that the landlords incurred a charge from the Strata of **\$100.00** to clean up this oil and I therefore uphold the landlords claim for this amount.

With regard to the landlords claim for changing the locks; I am not satisfied with the evidence before me that the landlord incurred this charge of \$60.00 to change the locks as the landlord has not provided a receipt in evidence from either a locksmith or for the cost of new locks. This section of the landlords claim is therefore dismissed without leave to reapply.

With regard to the landlords claim for junk removal; I am satisfied from the evidence before me that the tenants failed to remove their belongings or junk from outside the

property as agreed with the Bailiffs and the landlords incurred the cost of \$128.80 to have these items removed. Therefore I uphold the landlords claim for **\$128.80**.

With regard to the landlords claim to recover the costs incurred for sending registered mail to the tenant of \$21.37; there is no provision under the *Act* for costs of this nature to be awarded. This section of the landlords claim is therefore dismissed without leave to reapply.

As the landlords have been partially successful with their claim the landlords are entitled to recover the **\$50.00** filing fee from the tenant pursuant to s. 72(1) of the *Act*. A Monetary Order has been issued to the landlords pursuant to s. 67 and 72(1) of the *Act* for the following amount:

Costs incurred to enforce the Order of Possession	\$1,242.98
Loss of rent for four months	\$360.00
Oil spill	\$100.00
Removal of junk	\$128.80
Filing fee	\$50.00
Total amount due to the landlord	\$1,881.78

Conclusion

I HEREBY FIND in partial favor of the landlords' monetary claim. A copy of the landlords' decision will be accompanied by a Monetary Order for **\$1,881.78**. The order must be served on the respondent and is enforceable through the Provincial Court 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: July 25, 2013

Residential Tenancy Branch

