



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNR, MNSD, 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 his agent.

The landlord testified each tenant was 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 June 26, 2013 in accordance with Section 89. The landlord testified that the tenant refused the registered mail and failed to pick up the package at the post office once a notice had been left with her.

Based on the testimony of the landlord, I find that the tenants have been sufficiently served with the documents pursuant to the *Act*. I find the act of refusal to accept the registered mail on the part of the tenant as a deliberate attempt to avoid service.

While the landlord's claim included seeking the payment of rent for the month May 2013 I note that the landlord was awarded a monetary order for the payment of rent for May in a previous hearing. As such the matter is *res judicata*.

Res judicata is the doctrine that an issue has been definitively settled by a judicial decision. The three elements of this doctrine, according to Black's Law Dictionary, 7th Edition, are: an earlier decision has been made on the issue; a final judgement on the merits has been made; and the involvement of the same parties.

Therefore I amend the landlord's Application to exclude the matter of rent for the month of May 2013.

Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to a monetary order for damage to the rental unit; for unpaid utilities; for compensation due to damage to other rental units; for all or part of the security deposit 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 a copy of a tenancy agreement signed by the parties on September 29, 2011 for a month to month tenancy beginning on September 23, 2011 for a monthly rent of \$1,500.00 due on the 1st of each month with a security deposit of \$750.00 paid.

The landlord testified the tenant failed to vacate the rental unit in accordance with the order of possession issued in a June 11, 2013 decision that order the tenant to vacate the rental unit two days after service of the order. Eventually the tenant did vacate the rental unit.

The landlord submits that the tenant has caused significant damage to the rental unit; the residential property and to other rental units on the residential property. The landlord has provided photographic evidence of this damage. In part the damage has been caused by the tenant's pet and by the tenant's deliberate vandalism to the property including the stuffing and plugging of toilets, tubs, and sinks in all the units.

The landlord seeks compensation for the costs of repairs to the rental unit; residential property and other rental units. The landlord also seeks compensation for the loss of revenue from the additional rental units due to the damage. The landlord also seeks compensation for unpaid hydro bills since May 2013.

The landlord seeks the following compensation:

Description	Amount
Cleaning costs	\$188.54
Cleaning Supplies	\$258.59
Cleaning of basement units	\$500.00
Yard Cleanup	\$1,000.00
Utilities	\$1,072.91
Lost revenue – basement unit (6 months at \$1,500.00 per month)	\$9,000.00
Carpet replacement	\$750.00
Battery Charger replacement	\$100.00
Total	\$12,870.04

The landlord submits that he is unsure when the damage was caused to the basement units but based on the tenant's testimony at previous hearings he states that he believes that it occurred in April 2013. He states he has finally had the work completed and has been able to re-rent the units effective September 1, 2013.

The landlord also notes that the tenant refused to allow cleanup crews access to the residential property in May 2013 after the landlord had started attempting to clean up the damaged units and yard.

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 testimony and extensive documentary and photographic evidence I find the landlord has established the tenant not only failed to comply with the requirements of Section 37 but that she also caused significant damage to the residential property including both the yard and other units on the property.

I find the landlord has submitted sufficient evidence to establish the full value of his claim with one exception. I find the landlord cannot claim the full 6 months of lost revenue as he cannot specifically date the occurrence of the damage. However, I am satisfied the tenant interfered with the landlord's ability to restore the property as early as May 2013 and I grant the landlord compensation for lost revenue for the period May to August 31, 2013 for a total of \$6,000.00.

Conclusion

I find the landlord is entitled to monetary compensation pursuant to Section 67 in the amount of **\$9,920.04** comprised of the amounts noted above and the \$50.00 fee paid by the landlord for this application.

I order the landlord may deduct the security deposit and interest held in the amount of \$750.00 in partial satisfaction of this claim. I grant a monetary order in the amount of **\$9,170.04**.

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: October 24, 2013

Residential Tenancy Branch

