



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNSD, MNDC, FF

Introduction

This hearing dealt with an application by the landlord for a monetary order for damage to the unit, site, or property and for money owed or compensation for damage or loss under the Act, Regulation, or tenancy agreement.

The landlord named two respondents as tenants. For the reasons set out below, I have determined that only one of the respondents is a tenant. I have amended the style of cause accordingly.

Both the landlord and tenant attended the teleconference hearing and gave affirmed evidence. The tenant was represented by counsel.

Issue(s) to be Decided

Is the landlord entitled to a monetary order for damage to the unit, site, or property?
Is the landlord entitled to a monetary order for money owed or compensation for damage or loss under the Act, Regulation, or tenancy agreement?

Background and Evidence

The parties agree that the tenancy started on October 15, 2011. The male tenant was initially the sole full-time occupant of the rental unit and he was obligated to pay \$1,050.00 in rent monthly in advance on the last day of the previous month. The male tenant also paid a security deposit of \$525.00. The landlord and male tenant agreed to increase the rent to \$1,100.00 effective September 1, 2012 to acknowledge the full-time presence of the male tenant's girlfriend in the rental unit. It is at issue between the parties whether the male tenant's girlfriend was a "tenant" within the meaning of the Act.

On the issue of tenancy, the landlord's evidence is that the parties added an addendum to the written tenancy agreement when the male tenant's girlfriend moved in. The addendum is dated February 29, 2012 and is signed by the male tenant and the landlord. Item 7 on the addendum reads: "Additional tenant [name] rent increase to \$1100 per month starting March 31, 2012." The landlord's evidence is that she intended to add the male tenant's girlfriend as an occupant rather than a tenant.

The tenant's position is that the landlord did intend for the female occupant to be a co-tenant. The tenant notes that the landlord's email of January 31, 2012 to the male tenant makes the following reference "I am thinking \$100 for the extra tenant."

The parties agree that the female occupant started a grease fire while she was cooking on July 3, 2013. The male tenant was not home at the time. The landlord's insurance company was called and came to the rental unit that same day. The landlord's insurance company told the tenants that they had to vacate the rental unit, and they did so. Initially, the parties did not know how long it would take before the rental unit could be reoccupied. When it became apparent that the repairs would take some time, the tenants removed their possessions and found other accommodation.

The parties completed an undated move-out Condition Inspection Report (CIR). The CIR at Section Z "Damage to rental unit or residential property for which the tenant is responsible" has the following notation followed by the tenant's signature: "\$525 + possible costs for those not covered by insurance".

The landlord seeks a monetary order for the following:

Claim	Amount
Landlord's deductible for fire insurance claim	200.00
Loss of claim-free discount for three years (\$103.83 per year)	311.49
Painting	262.50
Kitchen cabinets and counters	946.46
Portable oil-filled heater	70.00
Insurance claim for repairs and loss of income	23,031.62
Total claim:	\$ 24,822.07

The landlord provided a copy of a claim form issued by her insurance company dated September 3, 2013 which lists the total claim paid to the landlord and to the contractor who repaired the rental unit. The claim form lists the following three categories of

claims: "Emergency", "General Repairs", and "Contents & Lost rental income". The claim form indicates the total claim paid by the insurance company is \$23,031.62.

The tenant's position is that he should not have to pay the landlord any amount that has already been covered by the insurance company.

The landlord provided copies of documents from her insurance company which confirm that her deductible for the fire claim was \$200.00 and the impact of the claim on her premiums is a three-year loss of her claims-free discount at \$103.83 per year.

The landlord's evidence is that the rental unit had been freshly painted before the tenant moved in. Her evidence is that the tenant installed a number of cabinets on the walls, and the walls were damaged as a result and had to have small holes filled and then painted. Her evidence is that her insurance company would only pay for one coat of paint subsequent to the fire, however she paid an additional amount of \$262.50 for filling the holes and a second coat of paint to cover the areas where holes were filled. The landlord provided a copy of the invoice for this work.

The tenant's evidence is that the insurance company paid for filling the holes in the walls and the \$262.50 invoice only covers the second coat of paint, which was not necessary.

The landlord gave evidence that the kitchen cabinets in the rental unit prior to the fire appeared to be constructed with plywood and paint. The insurance company told her they would pay \$1,150.00 toward the cost of replacement cabinets. The landlord's evidence is that she purchased new cabinets and countertops at a cost of \$2,114.46. She received \$1,150.00 from the insurance company, via her contractor, and was therefore out-of-pocket \$946.46.

The tenant's position is that the tenant is not responsible for any increase in value that the landlord obtains as a result of buying new cabinets and countertops.

The landlord gave evidence that she lent the tenant a portable heater for which she had paid \$70.00. After the tenants' belongings were removed from the rental unit, the portable heater was not returned to the landlord. The landlord did not provide evidence of the value of the portable heater.

The tenant gave evidence that he does not have the portable heater. His evidence is that the parties discussed the heater by email some time after the fire. The tenant offered to look into the whereabouts of the heater, but the landlord told him "if it's a

hassle, don't worry about it." Accordingly, the tenant took no further steps to locate the heater.

The landlord notes that Section 95(5) allows for a fine of more than \$5,000.00. Her position is that she should be compensated for her time in dealing with the repairs following the fire.

The tenant seeks costs against the landlord, if costs are available.

Analysis

I find that the female occupant of the rental unit was not a "tenant" within the meaning of the Act because she did not sign the tenancy agreement. The male tenant is therefore the sole "tenant" within the meaning of the Act. The tenant is responsible for damage to the unit, site, or property, and for money owed or compensation for damage or loss under the Act, Regulation, or tenancy agreement, that is caused by himself or by a person he permitted on the property. I find that the female occupant was a person the tenant permitted on the rental unit property.

Based on her evidence, I find that the female occupant caused a fire in the rental unit on July 3, 2013. The tenant is liable for any losses to the landlord resulting from the fire.

I agree with the submissions of the tenant that the tenant is not responsible for losses to the landlord for which the landlord's insurance company has already paid or reimbursed the landlord. Consequently, the landlord's application for a monetary order for the amount of her insurance claim of \$23,031.62 is dismissed.

I agree with the submissions of the tenant that the tenant is not responsible for improvements to the rental property, above the cost of restoring the rental unit to the condition it was in prior to the fire. I find that the insurance company's payment of \$1,150.00 was the replacement value of the original cabinets and the landlord's cost of \$964.46 was the cost of an improvement. I therefore dismiss the landlord's application for a monetary order for \$964.46.

I find that the tenant left an unreasonable number of small holes in the walls of the rental unit and the landlord is entitled to recover her cost of repair, which is \$262.50.

I find that the tenant is liable for the landlord's insurance deductible amount of \$200.00 and the three-year increase in the landlord's insurance premiums resulting from the fire insurance claim in the amount of \$311.49.

I find the landlord has not established her claim for \$70.00 for the portable heater. I accept the tenant's evidence that the landlord told him to not worry about the heater, and he therefore did not make any further effort to locate it.

The total amount due the landlord is \$823.99, comprised of \$200.00 (insurance deductible), \$311.49 (increased insurance premiums), and \$262.50 (wall repair and paint), and \$50.00 (partial RTB filing fee).

The landlord has been partly successful. However, the amount of her monetary claim that is established is less than \$5,000.00. Accordingly, I find she is entitled to recover \$50.00 from her RTB filing fee (the fee amount for claims of \$5,000.00 or less). The total amount due the landlord is \$823.99. I order that the landlord retain the security deposit of \$525.00 in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of \$298.99. This order may be filed in the Small Claims Court and enforced as an order of that Court.

The landlord inquired about whether fines are available through the operation of Section 95(5). Any fines levied through the operation of Section 95(5) are not paid to the landlord. Since the landlord apparently sought compensation through Section 95(5) and since compensation is not available, I have not considered Section 95(5) further.

The tenant inquired about the availability of costs against the landlord. The Act provides for one party to pay the filing fee of the other in appropriate circumstances, but makes no other provision for costs.

Conclusion

I grant the landlord a monetary order of \$298.99. The landlord may also retain the security deposit.

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: April 11, 2014

Residential Tenancy Branch

