



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNR, FF

Introduction

This hearing dealt with a landlord's amended claim for a Monetary Order for unpaid rent and compensation for damage to the rental unit. At the original hearing date of March 6, 2014 the landlord and one of the named tenants appeared at the hearing. The landlord testified that the tenants were served by registered mail. The tenant confirmed that he was appearing and representing all of the named tenants. The tenant requested an adjournment as the landlord had amended the Application for Dispute Resolution to include him as a respondent only a couple of weeks prior to the hearing and the tenant needed more time to gather and review documents from Income Assistance with respect to rent payments made by him and the other co-tenants.

After hearing testimony from both parties with respect to rent payments and a fire at the property, I ordered the hearing adjourned and the parties to provide the following documentary evidence:

1. The tenant was instructed to serve upon the Branch, and the landlord, print-outs or other evidence with respect to rent payments made by Income Assistance on the tenants' behalf and the tenant's accounting of outstanding rent.
2. The landlord was instructed to serve upon the Branch, and the other parties, evidence with respect to the fire at the property and insurance deductible.

Notices of Adjourned Hearing were sent to all parties by the Branch. At the reconvened hearing of April 24, 2014 only the landlord appeared. The landlord testified that he served the tenants with evidence regarding the fire and insurance deductible by way of registered mail sent on April 16, 2014. The landlord orally provided a registered mail number as proof of service.

I did not receive any evidence from the tenants during the period of adjournment. The landlord testified that he was not served with any evidence from the tenants.

Issue(s) to be Decided

Is the landlord entitled to compensation for unpaid rent and recovery of the insurance deductible?

Background and Evidence

The tenants were required to pay rent of \$1,300.00 on the 1st day of every month. A security deposit of \$650.00 was collected by the landlord. The security deposit has been dealt with by way of a decision and Monetary Order issued on February 12, 2014 in favour of the tenant appearing at this hearing and another co-tenant.

By way of this application, the landlord is seeking to recover unpaid rent of \$1,195.00 incurred during the period of February 2013 through October 2013. The balance of outstanding rent includes credit for payments received by the landlord at the end of October 2013 from Income Assistance for November 2013 rent.

The tenant acknowledged that there was some rent owing to the landlord but questioned whether the landlord had accounted for all of the payments received. The tenant was given the opportunity to gather and submit evidence with respect to rent payments made by Income Assistance by way of an adjournment; however, no such evidence was submitted by the tenant.

The tenant also questioned his obligation to pay the outstanding rent to the landlord since he did not sign a tenancy agreement. The landlord explained that the tenant appearing at the hearing was included in the landlord's amended Application for Dispute Resolution since the tenant is in receipt of a Monetary Order representing return of double the security deposit.

The landlord is also seeking to recover from the tenants a \$1,000.00 insurance deductible. On October 26, 2013 a fire seriously damaged the property, leaving it untenable, by order of the Fire Department until such time it is remediated. The landlord testified that the fire was caused by a clandestine drug lab being operated in the lower level of the house.

The tenant testified that another occupant began living at the property with the tenants as a way to catch up on their rental arrears. The tenant acknowledged that he was aware that the occupant brought chemicals into the property but claims the tenants were unaware that the occupant was operating a clandestine drug lab. The tenant

questioned whether the fire could have been caused by faulty electrical wiring at the property.

The landlord offered to call the insurance agent as a witness to provide testimony as to the cause of the fire and the insurance deductible. Since the hearing was being adjourned to allow the tenant the opportunity to gather evidence with respect to rent payments, I permitted the landlord to gather and submit documentary evidence with respect to the cause of the fire and insurance deductible.

The evidence submitted by the landlord during the adjournment included copies of two Incident Reports prepared by the Fire Department: one dated October 26, 2013 describing the response to the fire call and one dated October 28, 2013 describing finding chemicals that are consistent with a clandestine drug lab in the dwelling. The landlord also provided a copy of the Proof of Loss statement issued by the landlord's insurance company. The Proof of Loss statement confirms that the landlord has been compensated for loss of rental income, due to a fire at the property on October 26, 2013, less a \$1,000.00 deductible.

Analysis

Based upon everything presented to me, I provide the following findings and reasons with respect to the landlord's claims against the tenants.

With respect to the tenant's obligation to pay rent, I find the tenant is estopped from taking the position he is not a tenant obligated to pay rent. I make this finding since the tenant has previously filed multiple Applications for Dispute Resolution identifying himself as a tenant, including an Application that resulted in him being awarded return of double the security deposit. In other words, the tenant cannot come forward and represent himself as a tenant so as to obtain rights of a tenant in one Application but then argue he is not a tenant when the landlord seeks to hold the tenant responsible for obligations as a tenant. Therefore, I hold the tenants jointly and severally liable for compensating the landlord for unpaid rent. As with all co-tenants, it remains up to the co-tenants to apportion any liability among themselves.

The landlord provided an accounting of the outstanding rent incurred during 2013 and the tenant acknowledged that there was some outstanding rent. Given the tenant was given an opportunity to gather evidence to refute the landlord's calculations the tenant failed to submit any such evidence. Therefore, I accept the landlord's calculations in determining the tenants owe the landlord \$1,195.00 in unpaid rent and I award the landlord that amount.

Under the Act, a tenant is responsible for repairing, or compensating the landlord for repairing, damage caused by the tenants or a person permitted on the property by the tenants. With respect to the landlord's losses associated with a fire at the property, I find the evidence shows that the fire was likely caused by the tenants or someone permitted on the property by the tenants operating a clandestine drug lab at the property. Accordingly, I find the tenants are responsible for compensating the landlord for the losses that resulted. I am satisfied the landlord suffered a loss of \$1,000.00 as represented by the insurance deductible and I award that amount to the landlord.

As the landlord was successful with this Application, I further award the landlord recovery of the \$50.00 filing fee paid by the landlord.

In light of the above, I provide the landlord with a Monetary Order calculated as follows:

Unpaid Rent	\$ 1,195.00
Damage (fire insurance deductible)	1,000.00
Filing fee	<u>50.00</u>
Monetary Order	\$ 2,245.00

To enforce the Monetary Order it must be served upon the tenants and it may be filed in Provincial Court (Small Claims) to enforce as an order of the court.

Conclusion

The landlord has been provided a Monetary Order in the amount of \$2,245.00 to serve and enforce as necessary.

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 25, 2014

Residential Tenancy Branch

