



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 the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- a monetary order for damage to the rental unit, and for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- authorization to retain all or a portion of the tenants' security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover his filing fee from the tenants pursuant to section 72.

The tenants did not attend this hearing, although I waited until 11:22 a.m. in order to enable them to connect with this teleconference hearing scheduled for 11:00 a.m. The landlord attended the hearing and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

The landlord testified that he handed the male tenant a copy of his dispute resolution hearing package, including the original written evidence, to the male tenant (Tenant HA) on March 20, 2014. I am satisfied that the landlord served the male tenant (the tenant) with these documents in accordance with sections 88 and 89(1) of the *Act*.

The landlord testified that he attempted to hand Tenant WR a copy of his dispute resolution hearing package and his written evidence at her work address. He said that she refused to accept these documents. The landlord testified that he sent his hearing package and evidence package to Tenant WR by registered mail on March 17, 2014. He provided the Canada Post Tracking Number to confirm this registered mailing and said that he believes that it was successfully delivered to her because it has not been returned to him. Canada Post's Online Tracking system confirms the landlord's claim that the hearing package was successfully delivered on March 20, 2014. In accordance with sections 88, 89(1) and 90 of the *Act*, I find that Tenant WR was deemed served with the landlord's dispute resolution hearing package and original written evidence package on March 24, 2014, the fifth business day after its registered mailing.

Although the landlord submitted additional written evidence shortly before this hearing, he said that he had not provided copies of this evidence to either tenant. Since the landlord did not serve this late evidence to the tenant, I advised him that I could not consider this recent evidence in reaching my decision.

Issues(s) to be Decided

Is the landlord entitled to a monetary award for losses and damage arising out of this tenancy? Is the landlord entitled to retain all or a portion of the security deposit for this tenancy in partial satisfaction of the monetary award requested? Is the landlord entitled to recover the filing fee for this application from the tenants?

Background and Evidence

This one-year fixed term tenancy for a rental unit in a strata complex commenced on October 1, 2013. The landlord entered into written evidence a copy of the Residential Tenancy Agreement (the Agreement) showing that monthly rent was set at \$1,450.00, payable in advance on the first of each month, plus hydro and heat. The landlord continues to hold the tenants' \$725.00 security deposit paid on October 1, 2013.

The landlord gave sworn testimony that he received a text message from the tenants in late January 2014 advising him that the tenants wished to end their tenancy early. The landlord said the tenants surrendered vacant possession of the rental unit on March 20, 2014. He said that he received \$375.00 from the tenants on March 1, 2014, to be applied towards their March 2014 rent. He testified that he has received no further payments from the tenants since then.

After inspecting the premises, the landlord discovered that there had been considerable damage to this rental unit during the course of this tenancy. He said that the rental unit was in "mint condition" when this tenancy began. He entered into written evidence a copy of the joint move-in condition inspection report which was conducted on October 6 or 7, 2013, to confirm his sworn testimony. Although the landlord did not arrange for a joint move-out condition inspection and failed to prepare a move-out condition inspection report, he took many photographs, which he entered into evidence. The landlord also entered into written evidence copies of estimates and receipts he obtained to repair doors, walls, the fridge, the microwave oven, cabinets, carpets and wall outlets. He also entered into written evidence copies of letters from the strata council for various fines resulting from the tenants' actions.

The landlord testified that he incurred costs far in excess of the \$4,500.00 identified in his original application for dispute resolution. His original estimate for the repair of walls, windows, doors and cabinets was for \$3,500.00 plus GST. His estimate to clean

the carpets was \$500.00 plus GST or \$3,625.00 if the carpets needed to be fully replaced. Since the landlord did not amend his application for dispute resolution, I find that the maximum monetary award I can consider is the \$4,500.00 (plus his \$50.00 filing fee) identified in the landlord's application for dispute resolution.

The landlord said that the premises were in such poor condition at the end of this tenancy that he could not advertise the availability of the rental unit to prospective renters until the repairs of the rental unit had been completed. He testified that this repair process was finished a week before this hearing. He said that he lost rent of \$1,075.00 for March 2014, and has received no rent since then, as a result of the tenants' premature termination of their Agreement.

Analysis

Section 7(1) of the *Act* establishes that a tenant who does not comply with the *Act*, the regulations or the tenancy agreement must compensate the landlord for damage or loss that results from that failure to comply. I find that there is undisputed evidence that the tenants were in breach of their fixed term tenancy agreement because they vacated the rental premises prior to the September 30, 2014 date specified in that Agreement. As such, the landlord is entitled to compensation for losses he incurred as a result of the tenants' failure to comply with the terms of their tenancy agreement and the *Act*.

There is undisputed evidence that the tenants' last payment of rent was \$375.00 paid on March 1, 2014. However, section 7(2) of the *Act* places a responsibility on a landlord claiming compensation for loss resulting from a tenant's non-compliance with the *Act* to do whatever is reasonable to minimize that loss. Based on the evidence presented, I accept that the landlord did attempt to the extent that was reasonable to take action to repair considerable damage to the rental unit so as to enable the landlord to re-rent the premises. While this repair process has taken some time, the landlord said that he obtained three estimates from contractors, accepted the lowest bid, and had to wait to obtain repairs during the time frame provided by the contractor whose bid he had accepted. Based on the photographic and written evidence, and the landlord's sworn testimony, I find that it likely did take the landlord until at least the end of May 2014 to complete these repairs and make the premises available for rent to a prospective tenant. As such, I am satisfied that the landlord has discharged his duty under section 7(2) of the *Act* to minimize the tenants' exposure to the landlord's loss of rent.

Under these circumstances, I find that the landlord is entitled to a monetary award of the \$4,500.00 he has claimed in this original application. In coming to this determination, I note that the landlord has demonstrated his loss of \$1,075.00 in rent for March 2014, \$1,450.00 for April and May 2014, and has been unable to successfully rent the

premises for any portion of June 2014, as the premises were not ready to be shown to prospective renters until the last week of this month. In addition, the landlord clearly incurred costs to clean, repair, and refurbish the rental unit in excess of that which would be expected for reasonable wear and tear during a tenancy of this length for a rental unit that was new in 2008. In summary, I find that the landlord has adequately demonstrated that he has incurred the \$4,500.00 in damage and losses arising out of the tenants' actions he has claimed in his application.

As the landlord has been successful in this application, I allow him to recover his \$50.00 filing fee from the tenants. I allow the landlord to retain the tenant's \$725.00 security deposit to partially offset the monetary award issued in this decision. No interest is payable on this deposit over this period.

Conclusion

I issue a monetary Order in the landlord's favour under the following terms, which allows the landlord to recover losses, damage and his filing fee and to retain the tenants' security deposit:

Item	Amount
Losses and Damage Arising out of this Tenancy	\$4,500.00
Less Security Deposit	-725.00
Recovery of Filing Fee for this Application	50.00
Total Monetary Order	\$3,825.00

The landlord is provided with these Orders in the above terms and the tenant(s) must be served with this Order as soon as possible. Should the tenant(s) fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders 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: June 30, 2014

Residential Tenancy Branch

