



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

Decision

Dispute Codes:

MNR, MND, MNSD, FF

Introduction

This Dispute Resolution hearing was set to deal with an Application by the landlord for a monetary order for rent owed, loss of rent and cleaning.

Issue(s) to be Decided

Is the landlord entitled to monetary compensation under section 67 of the Act for rent and damages?

Preliminary Matters

Service of Hearing Package to Co-Tenant One

Section 89(1) of the Act provides that an application for dispute resolution must be given in one of the following ways:

- (a) by **leaving a copy with the person**;
- (b) if the person is a landlord, **by leaving a copy with an agent of the landlord**;
- (c) by sending a copy by **registered mail to the address at which the person resides** or, if the person is a landlord, to the address at which the person carries on business as a landlord;
- (d) if the person is a tenant, by sending a copy by registered mail to a forwarding address provided by the tenant;
- (e) as ordered by the director under section 71 (1) *[director's orders: delivery and service of documents]*.

In the case before me, co-tenants 1 was served at their place of employment. Although this method of service is not compliant with the Act, the landlord provided evidence that the registered mail was signed for by the addressee and

the Canada Post tracking information shows that the mail was signed for by the co-tenant on April 9, 2014. For this reason, I accept that the documents were served to co-tenant 1, despite the noncompliant method of service.

Service to Second Co-Tenant, Co-Tenant 2

The landlord stated that the Notice of Hearing documents were successfully served to one of the two co-tenants, (Co-Tenant 1), at their place of employment. However, according to the landlord, no current residential or even business address was known for Co-Tenant 2 and therefore the hearing package could not be mailed to his current address as required under the Act.

Sections 88 and 89 of the Act determine the method of service for documents. The Landlord has applied for a Monetary Order which requires that the landlord serve both of the tenants as set out under Section 89(1). In this case I found that only co-tenant 1, had been served with the Notice of Hearing documents.

Co-tenants are jointly and severally responsible for the payment of rent under a tenancy agreement. However as the landlord has not verified service of the Notice of Direct Request Proceeding documents upon the second tenant, as required by Section 89(1) of the Act, I find that the landlord's monetary claim against co-tenant 2, must be dismissed.

The hearing and claim will therefore proceed only against co-tenant 1, who I found has been served, based on Canada Post confirmation data.

Background and Evidence

The landlord testified that the tenancy began in May 2013 as a fixed term tenancy and was to end on April 30, 2014. The rent was \$2,600.00 and a total security deposit of \$1,300.00 is now being held. The landlord testified that the tenant did not pay rent for March 2014, but still remained in possession of the unit until close to the end of March, 2014, when the landlord discovered that the tenant had vacated without notice.

The landlord is claiming \$2,600.00 rent owed for the month of March 2014. The landlord testified that they incurred a \$2,600.00 loss of rent for the month of April 2014, as the tenant vacated prior to the agreed-upon April 30th expiry date in the fixed term tenancy and gave no notice, thereby depriving the landlord of any opportunity to find a replacement tenant.

The landlord testified that the tenant left the unit in a dirty condition and the landlord is claiming \$500.00 for cleaning costs. No move-in or move-out condition inspection reports were submitted to support the above claim and no receipts for the cleaning

costs were in evidence. However, the landlord did submit photos of the unit showing the condition and items left on site.

Analysis

Section 26 of the Act states that rent must be paid when it is due, under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement. I find that the landlord provided evidence that the tenant neglected to pay rent for the month of March 2014.

Therefore I find that the landlord is validly entitled to be compensated \$2,600.00 rent for March 2014.

With respect to the loss of rent for April 2014 and the costs for cleaning, I find that section 7 of the Act states that if a landlord or tenant does not comply with the Act, the regulations or the tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

Section 67 of the Act grants a dispute Resolution Officer the authority to determine the amount and to order payment under these circumstances.

It is important to note that in a claim for damage or loss under the Act, the party claiming the damage or loss bears the burden of proof and the evidence furnished by the applicant must satisfy each component of the test below:

Test For Damage and Loss Claims

1. Proof that the damage or loss exists,
2. Proof that this damage or loss happened solely because of the actions or neglect of the Respondent in violation of the Act or agreement
3. Verification of the actual amount required to compensate for the claimed loss or to rectify the damage.
4. Proof that the claimant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage

The burden of proof is on the claimant, that being the landlord.

I accept the landlord's testimony that the tenant vacated the unit prior to the fixed term tenancy without giving the landlord sufficient Notice that would permit the landlord to mitigate the loss of revenue for the final month of the fixed term by finding a replacement tenant. Therefore, I find that the landlord's claim for loss of \$2,600.00 rent for the month of April should be allowed.

Regarding the landlord's claims for cleaning, I find that section 37(2) of the Act states that, when a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.

I find that the landlord's evidence regarding the cleaning costs is insufficient to meet elements 2 and 3 of the test for damages due to missing copies of the move-in and move-out condition inspection reports and receipts. Therefore I find that the claim for compensation for the cleaning does not satisfy the test for damages and must be dismissed.

Accordingly, I find that the landlord is entitled to a total monetary claim of \$5,300 comprised of, \$2,600.00 for rent owed for March 2014, \$2,600.00 loss of revenue for April 2014 and the \$100.00 cost of this application.

I order that the landlord retain the tenant's \$1,300.00 security deposit in partial satisfaction of the claim, leaving the amount of \$4,000.00 still outstanding.

after receiving the tenant's forwarding address on February 3, 2011 and made an

I hereby issue a monetary order in favour of the landlord for \$4,000.00. This order must be served on the tenant and if unpaid can be enforced through Small Claims Court.

The remainder of the landlord's application is dismissed without leave.

Conclusion

The landlord is partly successful in the application and is granted a monetary order for rent owed and loss of revenue. The landlord's claim for cleaning costs is dismissed due to insufficient evidence.

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 29, 2014

Residential Tenancy Branch

