



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, FF

Introduction

This hearing was scheduled to deal with a landlord's application for a Monetary Order for damage or loss under the Act, regulations or tenancy agreement. Only the landlords appeared for the scheduled hearing dates.

Preliminary matters

At the outset of the hearing, the female landlord disclosed that she is a lawyer.

In filing this Application, the landlords named two co-tenants as respondents. At the original hearing of May 6, 2014 I heard that a hearing package was sent to both tenants in a single envelope by way registered mail that was accepted by the female tenant. Additional evidence sent in the same manner on February 6, 2014 went unclaimed. The landlord requested an adjournment so that the male tenant may be served with the hearing package in a manner that complies with the Act. The hearing was adjourned and I ordered the landlord to serve the male tenant with a complete copy of the entire hearing package and to serve a Notice of Reconvened Hearing upon the female tenant.

Although a Notice of Reconvened Hearing was sent to the female tenant at her last known address, at the reconvened hearing of July 17, 2014 the landlord withdrew the claims against the female tenant. Accordingly, I have excluded the female tenant as a named party to this dispute.

The landlord wished to proceed against the male tenant only. As to service upon the male tenant, the landlord submitted the following:

- The male tenant confirmed with the landlord via text message on June 11, 2014 that correspondence should be sent to him at a certain address, believed to be his mother's address.

- The landlord sent the hearing package to the male tenant using that address via registered mail on June 11, 2014; however, the registered mail was returned as it was “refused by recipient”.
- The male tenant informed the landlord via text message on June 14, 2014 that his mother may have refused the registered mail but the male tenant confirmed he was aware of the hearing.
- The landlord contacted the male tenant via text message to inform him the registered mail was returned and the parties set a date to meet in person; however, the male tenant did not respond to requests to set a place for the meeting.
- The landlord then attended the address given by the male tenant. The woman who answered the door, believed to be the male tenant’s mother, indicated the male tenant does not reside with her but that he receives his mail at her address. The woman accepted the package from the landlord.

In support of the above, the landlord provided copies of several text messages exchanged between the parties; the registered mail envelope that was sent on June 11, 2014 and subsequently returned to the landlord; and, tracking information from Canada post indicating the June 11, 2014 registered mail was refused by recipient.

Under section 71 of the Act, I have the authority to deem a party sufficiently served with an Application for Dispute Resolution and other documents even if the documents were delivered in a manner that does not meet the requirements provided under section 88 or 89 of the Act, as applicable. Considering all of the above evidence, I was satisfied the landlords delivered the hearing package to an address the male tenant instructed the landlords to use and I deemed him sufficiently served under section 71. Therefore, I proceeded to hear the landlords’ claims against the male tenant.

Issue(s) to be Decided

Have the landlords established an entitlement to compensation for damage or loss under the Act, regulations or tenancy agreement?

Background and Evidence

The tenancy commenced August 1, 2013 and the tenants were required to pay rent of \$1,200.00 per month. The landlords collected a security deposit of \$600.00.

The tenants failed to pay rent for the months of October and November 2013 and the landlord issued a 10 Day Notice to End Tenancy for Unpaid Rent. A hearing was held

on December 18, 2013 to deal with cross applications filed by the parties. On December 19, 2013 the Arbitrator dismissed the tenants' request to cancel the 10 day Notice and provided the landlords with an Order of Possession effective two days after service and a Monetary Order for rent for the months of October through December 2013. The landlord served the tenants with the Order of Possession on December 23, 2014. The tenants filed an Application for Review Consideration and remained in possession of the rental unit until January 5, 2014. The tenant's Application for Review was subsequently dismissed.

Since the tenants had filed an Application for Review, the Order of Possession could not be enforced and the tenants could not be removed from the property before January 1, 2014. As a result, the landlords could not re-rent the unit starting January 1, 2014. After the tenants vacated the property on January 5, 2014, the landlords found the tenants left the property dirty, damaged and with piles of garbage. Due to the tenants' actions, the landlords are seeking to hold the tenants responsible for the loss of rent they suffered for the month of January 2014. The landlords originally claimed loss of rent of \$1,500.00 as the purported market value of the property but during the hearing reduced the claim to \$1,200.00 as that was the amount the tenants were required to pay. The landlord testified that the unit was re-rented as of March 2014.

In addition to loss of rent, the landlords requested compensation of \$300.00 for cleaning and \$252.00 for garbage removal since the tenants left the unit dirty and with piles of garbage. The landlords' position was supported by photographs and video taken before and after this tenancy. The amounts claimed were supported by an invoice for rubbish removal in the amount of \$252.00 dated January 16, 2014 and an invoice for cleaning in the amount \$308.00 dated January 29, 2014.

The landlords are also seeking compensation for missing furnishings. Several curtains and curtain rods on the main level were missing when the landlords regained possession of the rental unit. Further, the tenants were provided access to an upper suite in the property which was furnished. The landlord was of the understanding it was to be used by the tenants' mother/mother-in-law but that the tenants sub-let it to another person. Upon regaining possession of the upper unit, the landlords found that several of the furnishings in the upper suite were missing, including: curtains and curtain rods; dresser; tables; leather couch; dishes; a kettle and other small appliances. The landlord testified that the upper unit had been constructed and furnished in 2012 but that it had not been lived in before the tenants were given access. As a result, the landlords are seeking to recover the original cost of the missing property. In support of the landlord's position, the landlords provided photographs and video of the property before the tenancy began and upon regaining possession of the residential property. In support of

the amounts claimed, the landlords provided a list of the missing property and receipts for these items totalling \$688.52.

During the hearing, the landlord requested the security deposit be retained and used to offset a portion of the above-described losses.

Analysis

Under the Act, a tenant is required to leave a rental unit reasonably clean and vacant. These requirements mean the tenant must remove all of their garbage. Based upon the undisputed evidence presented to me and the receipts provided by the landlords, I find the landlords have established that the tenants failed to meet these requirements and I grant the landlords' request for compensation for cleaning and garbage removal in the amounts of \$300.00 and \$252.00, respectively.

I accept the undisputed evidence in finding that many furnishings were taken from the main level and upper suite while the tenants were in possession of the residential property. I find the landlords' claim for compensation supported by the evidence and reasonable in the circumstances. Therefore, I grant the landlords' request to recover \$688.52 from the tenant for the missing furnishings.

As found by the Arbitrator presiding over the December 18, 2013 hearing, the tenancy legally ended on November 15, 2013 due to unpaid rent and by way of the decision and Order of Possession issued December 19, 2013 the tenants were ordered to return possession of the unit to the landlords. In filing an Application for Review Consideration, the tenants effectively halted the enforceability of the Order of Possession. Since the Arbitrator reviewing the tenants' Application for Review Consideration found they did not present a basis for review and the tenants remained in possession of the rental unit until January 5, 2014 I find the tenants' actions caused the landlords to incur additional loss of rent for the month of January 2014. I also find the condition the property was left by the tenants further contributed to the landlords' loss of rent for January 2014. Therefore, I grant the landlords' claim for loss of rent in the amount of \$1,200.00.

I authorize the landlords to retain the security deposit in partial satisfaction of the amounts awarded to the landlords. I also award the landlords the filing fee paid for this application.

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

Loss of rent – January 2014	\$1,200.00
Cleaning	300.00
Garbage removal	252.00
Missing furnishings	688.52
Filing fee	50.00
Less: security deposit	<u>(600.00)</u>
Monetary Order	\$1,890.52

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

Conclusion

The landlords have been authorized to retain the security deposit and have been provided a Monetary Order for the balance of \$1,890.52 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: August 13, 2014

Residential Tenancy Branch

