



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNR, MNSD, MNDC, FF

Introduction

This hearing dealt with the landlords' Application for Dispute Resolution seeking a monetary order.

The hearing was conducted via teleconference and was attended by the landlords only.

The landlords provided documentary evidence to confirm that each tenant was served with the notice of hearing documents and this Application for Dispute Resolution, pursuant to Section 59(3) of the *Residential Tenancy Act (Act)* by registered mail on April 30, 2014 in accordance with Section 89. As per Section 90, the documents are deemed received by each tenant on the 5th day after it was mailed.

The landlords provided confirmation that the tenants did not claim the hearing packages. I find the act of not claiming the registered mail packages from the landlord is a deliberate attempt to avoid service on the part of the tenants.

The landlords also provided documentary evidence to confirm that each tenant was served with their evidence by registered mail on July 22, 2014. The landlords confirmed that Canada Post shows that the both evidence packages were received and accepted by the tenants.

I note that the evidence package Table of Contents page indicates that the evidence is for a Dispute Resolution Hearing and provides the file number. I find that by accepting the evidence package that contains this information the tenants could have contacted the landlords or the Residential Tenancy Branch to find out details of this hearing.

Based on the testimony and documentary evidence of the landlords, I find that each tenant has been sufficiently served with the documents pursuant to the *Act*.

Issue(s) to be Decided

The issues to be decided are whether the landlords are entitled to a monetary order for unpaid rent; for lost revenue; for compensation for damage to the rental property; for compensation for other losses resulting from the tenancy; for all or part of the security

deposit and to recover the filing fee from the tenants for the cost of the Application for Dispute Resolution, pursuant to Sections 37, 38, 44, 67, and 72 of the *Act*.

Background and Evidence

The landlords submitted into evidence a copy of a tenancy agreement signed by the parties on February 16, 2012 for a two year fixed term tenancy beginning on March 15, 2012 that converted to a month to month tenancy on March 15, 2014 with a monthly rent of \$2,500.00 due on the 1st of each month with a security deposit of \$1,250.00 paid. The tenancy ended when the tenants vacated the rental unit on April 22, 2014.

The landlords submit the tenants gave notice on March 1, 2014 by email that they intended to end the tenancy effective March 31, 2014. However, the landlords have submitted a substantial volume of emails from the tenants continually changing the end date throughout the months of March and April 2014.

The landlords submit that the tenants did not pay any amount of rent for the month of April 2014. The landlords also submit that the tenants had caused, either through their own action or by failing to inform the landlord of problems with the residential property, significant damage to the rental property.

The landlords have submitted into evidence photographic evidence of the condition of the residential property both prior to the start of the tenancy and at the end of the tenancy. They have also submitted some witness statements that confirm the condition of the property at the end of the tenancy.

The landlords submit that despite repeated attempts on the part of the landlords over the course of the tenancy the tenants would not allow the landlord to attend the property for inspections. In addition, the landlords submit that the tenants failed to report any water or mould problems in the house.

When the residential property was returned to the landlords they discovered significant damage cause as a result of the tenants' failure to inform the landlord that there were any water problems.

The landlords submit that they were able to have insurance cover some of the repairs and some of the lost revenue but not all. The landlords seek to recover the costs not covered by insurance.

The landlords have also submitted into evidence invoices and receipts for work carried out to repair and clean the residential property and for additional insurance costs that resulted from the tenants' actions.

The landlord's claim is as follows:

Description	Amount
Labour and materials for repairs to areas not covered by insurance claim	\$4,589.60
Repairs to flooring caused by dog urine	\$451.35
Cost of Mould Remediation	\$3,271.54
Landlords' work – cleaning/painting	\$175.00
Cleaning Services	\$125.00
Re-keying of property (tenants did not return any keys)	\$125.00
Insurance deductible for repairs due to mould and water damage	\$1,000.00
Vacancy Insurance (\$47.00 per month – 3 months)	\$141.00
Loss of no claim bonus	\$780.00
Lost revenue – April, May, and August (June and July covered by insurance)	\$7,500.00
Cost of Registered mail	\$24.14
Total	\$18,182.63

Analysis

To be successful in a claim for compensation for damage or loss the applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
3. The value of the damage or loss; **and**
4. Steps taken, if any, to mitigate the damage or loss.

Section 32(2) of the *Act* requires a tenant to maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access.

Section 32(3) of the *Act* requires a tenant to repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.

Based on the undisputed evidence and testimony provided by the landlord I find that the tenants failed to inform the landlords of any problems with the property prior to the end of the tenancy. I also find that as a result of this failure the residential property was significantly damaged by water and mould.

Section 37 of the *Act* requires a tenant who is vacating a rental unit to leave the unit reasonably clean, and undamaged except for reasonable wear and tear, and give the landlord all keys or other means of access that are in the possession and control of the tenant and that allow access to and within the residential property.

In addition to the damage caused by water and mould, I find the landlords have submitted sufficient undisputed documentary evidence to establish that the tenants also

caused additional damage in other parts of the property that was not repaired by the tenants prior to the end of the tenancy. I also find the tenants failed to leave the rental unit reasonably cleaned.

As a result of this damage, I accept the landlords have not been able to re-rent this property and that it is in the final stages of reparation and preparation for new tenants.

I accept that over and above the amounts covered by insurance the landlord has established the value of the repairs and cleaning as outlined in the table above. I also find the landlord has established through their undisputed evidence the additional losses they have suffered as a result included their insurance deductible and increased and additional premiums.

I also find the landlords have suffered a loss of revenue that includes the months of April; May; and August 2014 that is not covered by their insurance.

However, as the cost of registered mail is related solely to the landlord's choices of pursuing this claim and not allowed for under the Act, I dismiss this portion of the landlords' claim.

Conclusion

Based on the above, I find the landlords are entitled to monetary compensation pursuant to Section 67 in the amount of **\$18,258.49** comprised of the amounts claimed above totalling \$18,182.63 and the \$100.00 fee paid by the landlord for this application less \$24.14 for registered mail costs.

I order the landlord may deduct the security deposit and interest held in the amount of \$1,250.00 in partial satisfaction of this claim. I grant a monetary order in the amount of **\$17,008.49**.

This order must be served on the tenants. If the tenants fail to comply with this order the landlords may file the order in the Provincial Court (Small Claims) and be enforced as an order 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: August 05, 2014

