



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding NESS HOLDINGS c/o AWM-ALLIANCE REAL ESTATE GROUP LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MND MNSD MNDC FF

Section 89(1) of the *Residential Tenancy Act* and Section 3.1 of the *Residential Tenancy Rules of Procedures* determines the method of service for documents. The Landlord has applied for a monetary Order which requires that the Landlord serve **each** respondent as set out under *Residential Tenancy Rules of Procedures*.

The Landlord affirmed that the Tenant R.K. was not served with copies of the Landlord's application for dispute resolution or Notice of dispute resolution hearing documents. Therefore, only one of the two Tenants has been served with the application and Notice of Dispute Resolution documents. Accordingly, I find that the request for a Monetary Order against both Tenants must be amended to include only R.R., the Tenant who has been properly served with Notice of this Proceeding. As the second Tenant R.K., has not been properly served the Application for Dispute Resolution as required, the monetary claim against R.K. is dismissed without leave to reapply.

Introduction

This hearing dealt with an Application for Dispute Resolution filed on May 29, 2014, by the Landlord to obtain a Monetary Order for: damage to the unit, site or property; to keep all or part of the security deposit; for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement; and to recover the cost of the filing fee from the Tenants for this application.

The hearing was conducted via teleconference and was attended by the Landlord. The Landlord provided affirmed testimony that the Tenant, R.R., was served with copies of the Landlord's application for dispute resolution and Notice of dispute resolution hearing, on May 30, 2014, by registered mail. Canada Post receipts were provided in the Landlord's evidence. Based on the submissions of the Landlord I find the Tenant, R.R., was deemed served notice of this proceeding on June 4, 2014, five days after they were mailed, in accordance with section 90 of the Act; and I proceeded in the Tenant's absence.

A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

Issue(s) to be Decided

Has the Landlord proven entitlement to monetary compensation?

Background and Evidence

The Landlord submitted evidence in support of their claim which included a copy of the tenancy agreement, the move in and move out condition inspection report forms, photographs of the rental unit; receipts for work performed on the unit, and copies of emails between the Landlord and Tenant(s).

The evidence provided that the parties executed a written tenancy agreement for a fixed term tenancy that commenced on November 15, 2013 and scheduled to end on May 14, 2014 at which time the Tenants were required to vacate the unit. The Tenants were required to pay rent of \$1,350.00 on the first of each month and on November 14, 2013 the Tenants paid \$675.00 as the security deposit. The parties conducted a walk through inspection and completed condition inspection report forms at move in November 15, 2013 and at move out May 14, 2014. The Tenants remained in possession of the rental unit until 11:00 a.m. on May 15, 2014. The Tenants instructed the Landlord to use the rental unit address as their forwarding address in an email sent on May 12, 2014.

The Landlord deposed that the Tenants over held the rental unit one day and they left the rental unit dirty, with debris, and a broken chair. The Landlord submitted receipts to support their claim which included \$225.00 for suite cleaning and \$246.75 for carpet and upholstery/furniture cleaning. The Landlord seeks \$45.00 for over holding charges plus \$125.00 for the cost of the broken chair, as supported by an email estimate.

Analysis

Upon consideration of the evidence before me, in the absence of any evidence from the Tenants who did not appear, despite being properly served with notice of this proceeding, I accept the undisputed version of events as discussed by the Landlord and corroborated by their documentary evidence.

The *Residential Tenancy Policy Guideline # 3* provides that if a tenant remains in possession of the rental property, after a tenancy agreement has ended (over holding), the tenant will be liable to pay occupation rent on a per diem basis until the landlord recovers possession of the premises.

In this case, the tenancy agreement was for a fixed term which required the Tenants to vacate the property on May 14, 2014, which was the end of the fixed term. The evidence supports that the Tenants over held the unit until May 15, 2014 at 11:00 a.m. Accordingly, I award the Landlord use and occupancy in the amount of **\$45.00**.

Section 32 (3) of the Act provides that a tenant of a rental unit must 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.

Section 37(2) of the Act provides 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.

Based on the aforementioned I find the Tenants have breached sections 32(3) and 37(2) of the Act, leaving the rental unit unclean and with some damage at the end of the tenancy.

As per the foregoing I find the Landlord has met the burden of proof and I award them damages in the amount of **\$596.75** (\$225.00 + \$246.75 + \$125.00).

The Landlord has been successful with their application; therefore I award recovery of the **\$50.00** filing fee.

Monetary Order – I find that the Landlord is entitled to a monetary claim and that this claim meets the criteria under section 72(2)(b) of the *Act* to be offset against the Tenants' security deposit plus interest as follows:

Over holding	\$ 45.00
Damages & repairs	\$596.75
Filing Fee	<u>50.00</u>
SUBTOTAL	\$691.75
LESS: Security Deposit \$67500 + Interest 0.00	<u>-675.00</u>
Offset amount due to the Landlord	<u>\$ 16.75</u>

Conclusion

The Landlord has been awarded a Monetary Order in the amount of **\$16.75**. This Order is legally binding and must be served upon the Tenant.

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: September 29, 2014

Residential Tenancy Branch

