



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding HUI 858 DEVELOPMENT LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes: MNR MNDC MND MNSD FF

Introduction:

This hearing dealt with an application by the landlord pursuant to the Residential Tenancy Act for orders as follows:

- a) A monetary order pursuant to Section 67;
- c) An Order to retain the security deposit pursuant to Section 38; and
- d) An order to recover the filing fee pursuant to Section 72.

SERVICE:

The tenants did not attend. The landlord gave sworn testimony that he had served the first three tenants on the Application personally with the Application for Dispute Resolution and the other four by posting it on their doors. He said they confirmed receipt by email but had not provided evidence of this. I find that only three of the tenants were legally served with the documents according to section 89 of the Act.

Issue(s) to be Decided:

Has the landlord proved on the balance of probabilities that the tenant did damages to the property, that they were beyond reasonable wear and tear and the cost to cure the damage? Is the landlord entitled to recover the filing fee?

Background and Evidence:

Only the landlord attended and was given opportunity to be heard, to present evidence and to make submissions. He said that the tenancy of all 7 students was a joint tenancy on a standard tenancy agreement. The tenancy commenced on September 1, 2013, rent was \$650 for each (total \$4550 for 7) per month plus utilities. The security deposit was \$2275 and is still held in trust; he has no forwarding address for the tenants who have returned to Asia. He said the tenants were supposed to vacate on April 30, 2014 but did not vacate until May 31, 2014. They left without paying rent for May. They also owe \$1050 for cleaning costs plus \$300 cost of cleaning after unauthorized pets. He also said they did not pay utilities of \$1500 for March and April 2014. He claimed \$4800 on the Application but said that was before he knew the other costs.

The landlord provided no documents to support his claim. He said he had planned to fax them yesterday but I pointed out that this would be too late under the Rules of Procedure. On the basis of the solemnly sworn evidence presented at the hearing, a decision has been reached.

Analysis

The onus of proof is on the landlord to prove that the tenants owe rent, that they did damage to the property, that it was beyond reasonable wear and tear and the amount it cost to cure this damage. I find the landlord has not satisfied the onus as he has provided no documents such as a tenancy agreement, a rental ledger, invoices and utility bills. He states that he has these documents but did not submit them in time for the hearing. Therefore, as discussed with him, I dismiss this Application and give him leave to reapply. I recognize the difficult issue of service of a new Application and will make an order for substituted service.

In respect to the security deposit, if the tenants do not supply any forwarding address in writing within one year after the end of the tenancy, section 39 of the Act applies and the landlord may keep the deposit and the right of the tenant is extinguished.

Conclusion:

I dismiss this Application with leave to reapply.

I HEREBY ORDER pursuant to section 71 of the *Residential Tenancy Act* and notwithstanding sections 88 and 89, that the landlord may serve the tenants by electronic means by facsimile or email or similar means. I ORDER that proof of a reply to it from the tenants on an electronic or other device such as telephone text will be sufficient to show service for the purposes of the Act.

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 10, 2014

Residential Tenancy Branch

