



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, OPB, MNR, MNSD, MNDC, FF

Introduction

This hearing dealt with the landlord's Application for Dispute Resolution seeking an order of possession and a monetary order.

The hearing was conducted via teleconference and was attended by the landlord

The landlord provided documentary evidence 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 August 29, 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 landlord submits the tenants did not accept the hearing package. With the agreement of the landlord I confirmed by way of review of the Canada Post website for tracking registered mail that Canada Post attempted delivery of the package; that they provide a notice and a final notice that the package was available to them.

The landlord also submitted into evidence a copy of an email received by him in response to his email to the female tenant reminding her that he had sent hearing packages to her and the male tenant that states: "We have not received or picked up a hearing package. So until we receive something stating about the hearing we don't have to be there."

Based on the testimony and evidence of the landlord, I find that each tenant has been sufficiently served with the documents pursuant to the *Act*. I also find that the tenants have deliberately avoided service of the hearing documents under the belief that if they did not accept it from Canada Post they would not have to participate or could be held to any decisions made during the hearing.

At the outset of the hearing the landlord confirmed the tenants vacated the rental unit on or before October 6, 2014 and as such he no longer requires an order of possession. I amend the landlord's Application for Dispute Resolution to exclude the matter of possession.

Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to a monetary order for unpaid rent and overholding; for cleaning and damage to the rental unit; 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, 67, and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The landlord provided a copy of a tenancy agreement signed by the parties on March 30, 2014 for a 6 month fixed term tenancy beginning on April 1, 2014 for a monthly rent of \$1,150.00 due on the 2nd of each month with a security deposit of \$575.00 paid. The landlord confirmed the tenants vacated the rental unit on or before October 6, 2014.

The landlord submits that despite being informed of the move out condition inspection at least three times, including by email and by issuing a Notice of Final Opportunity to Schedule a Condition Inspection indicating the inspection was to take place on October 8, 2014 at 8:00 p.m. the tenant refused to attend the inspection.

The landlord has submitted copies of two emails from the tenant that she did not plan to attend the move out condition inspection. One email is dated October 2, 2014 and states: "My key will be in your box I won't be present for the move out inspection." The other email is dated October 7, 2014 and states: "I again will not be present for the move out inspection as I have other things to do."

The landlord submits the tenants failed to pay rent for the months of August and September or any portion of rent for the month of October 2014. The landlord seeks \$2,300.00 for rent for August and September 2014 and \$637.50 for overholding the rental unit for the month of October 2014.

The landlord also submits the tenants failed to leave the rental unit reasonably cleaned and undamaged at the end of the tenancy. He submits that as a result he spent 4 hours doing general cleaning; 1 hour of garbage removal; and 1 hour of repairs to damage in

the drywall in the master bedroom ledge for a total of 6 hours labour at \$25.00 per hour for a total of \$150.00.

The landlord submits the tenants had caused damage to the bath tub faucet and drain and seeks \$30.00 for repairs and an additional \$30.00 for repairs to the bathroom door handle that had the finished also damaged. As per the tenancy agreement, the landlord seeks compensation for carpet cleaning in the amount of \$168.00 that the tenants failed to complete or pay for.

Analysis

Section 35 of the *Act* stipulates that the landlord and tenant must inspect the condition of the rental unit before a new tenant begins to occupy the rental unit on or after the day the tenant ceases to occupy the rental unit or on another mutually agreed upon day. The Section goes on to say the landlord must offer the tenant at least 2 opportunities to complete the inspection.

Section 36 states that the right of a tenant to the return of a security deposit or a pet damage deposit, or both, is extinguished if the landlord has provided at least 2 opportunities to attend a move out inspection and the tenant has not participated on either occasion.

Based on the landlord's documentary evidence, I am satisfied the landlord provided notice of the move out inspection at least twice and in the form required under the *Act*. I find that the tenants failed to attend the inspection and as such have extinguished their right to the return of the security deposit.

Therefore, I find the landlord is able to retain the tenants' security deposit and does not have to apply it to any of the losses he has suffered as a result of the tenancy.

Based on the landlord's undisputed evidence and testimony I find the tenants failed to pay rent for the months of August and September 2014 and that despite being issued a notice to end tenancy the tenants remained in the rental unit and were overholding until October 6, 2014. As such, I find the landlord is entitled to compensation in the amount claim of \$2,937.50.

I also find, based on the landlord's undisputed evidence and testimony that the tenants failed to leave the rental unit reasonably clean and undamaged and as a result the landlord has suffered losses in the amounts claimed totalling \$378.00.

Conclusion

I find the landlord is entitled to monetary compensation pursuant to Section 67 and grant a monetary order in the amount of **\$3,365.50** comprised of \$2,937.50 rent owed; \$378.00 cleaning; repairs; and carpet cleaning and the \$50.00 fee paid by the landlord for this application.

This order must be served on the tenants. If the tenants fail to comply with this order the landlord 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: October 21, 2014

Residential Tenancy Branch

