



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FF, MND, MNDC, MNR, MNSD

Introduction

This is an application for a monetary order and a request for recovery of the \$100.00 filing fee.

A substantial amount of documentary evidence, photo evidence, and written arguments has been submitted by the parties prior to the hearing.

I have given the parties the opportunity to present all relevant evidence, and to give oral testimony, and the parties were given the opportunity to ask questions of the other parties.

All testimony was taken under affirmation.

Issue(s) to be Decided

Has the applicant established monetary claim against the respondent's, and if so in what amount.

Background and Evidence

At the beginning of the hearing the respondent stated that he believes that the female respondent should be removed from the application, or any order issued, as he was the only one who signed the tenancy agreement. The landlord argued that her name should remain on the application as her name is listed as a tenant on the tenancy agreement.

The landlord is claiming a substantial amount of lost rental revenue, and damages to the rental unit as follows:

June 2014 rent outstanding	\$1350.00
July 2014 rent outstanding	\$2700.00
August 2014 rent outstanding	\$2700.00
September lost rental revenue	\$1350.00
General cleaning	\$283.50
Carpet cleaning	\$110.25
Mattress damage	\$200.00 estimate
Damages to door, walls, screen, handrail, carport door	\$250.00
Chip buffet/china cabinet	\$150.00 estimate
Replace broken 3 drawer chest	\$110.88
Replace to broken solid wood chairs	\$100.00 estimate
Canada Post mail costs	\$43.36
Filing fee	\$100.00
Total	\$9447.99

The landlord testified that the tenant was in a fixed term lease which expired on September 14, 2014, however he gave notice that he was moving out and stopped paying rent in June 2014.

Landlord also testified that the tenant informed her she could keep the security deposit towards a portion of the June 2014 rent.

Further the landlord stated that the tenant failed to remove all his belongings or return the keys for the rental unit until late August 2014 and as a result she lost the full rental revenue for the months of July 2014 August 2014 and half of September 2014, (the end of the lease). She was able to re-rent the unit for October 2014.

Further the landlord stated that the tenant left the rental unit in need of extensive cleaning and carpet cleaning, and left damages as listed above.

The applicant is therefore requesting a monetary order be issued for the above amount.

The tenant stated that there are portions of the claim that he does not dispute as follows:

General cleaning	\$283.50
Carpet cleaning	\$110.25
Mattress stains	\$200.00
Damages to doors, walls, screens, handrail etc.	\$250.00
Chip buffet	\$150.00
Broken three drawer chest	\$110.88
Broken chairs	\$100.00
One half months rent for June 2014	\$1350.00
Total	\$2554.63

The tenant however does dispute having to pay any further rent as he claims he gave the landlord notice and moved in mid-June 2014 allowing the landlord to keep his security deposit towards half the rent.

The tenant also stated that although he does not dispute the above damages, he requests that the arbitrator review the claim to ensure that the costs are justifiable.

He does not believe he should have to pay for July 2014 or August 2014 rent as the landlord did not attempt to re-rent the unit until late August, when he returned the keys and removed the remainder of the belongings that had been left in the rental unit.

The tenant believes that the landlord should have taken possession of the rental unit, even though he had not yet returned the keys, and ensured that the rental unit was prepared for renting and re-rented.

The landlord stated that she was unable to re-rent the unit as she was unable to get the keys back from the tenant as every time he was contacted he stated he was out of town. She therefore believes she rented the unit as soon as possible once the keys were returned and the tenants the lines removed.

Analysis

With regards to the tenants request to remove the female respondent from the claim it is my finding that the female respondent was a co-occupant of the rental unit, but she cannot be held liable as a tenant as she did not sign the tenancy agreement. Therefore any order issued will be against the male respondent only.

With regards to the portion of the claim that the tenant is not disputing, I have reviewed the landlord's evidence and it is my finding that the amounts claim for damages and cleaning are justifiable and therefore I will allow that portion of the claim.

Further, since the tenant is not disputing the claim for \$1350.00 rent for the month of June 2014 I also allow that portion of the claim.

As far as the claim for rent or lost rental revenue for the months of July 2014, August 2014, and September 2014 it is my finding that the tenant is also liable for the full amount claimed by the landlord.

The tenant stated that he believes the landlord should have taken possession of the unit and ensured that it was cleaned out and re-rented as soon as possible, however in this case since the tenant was in a fixed term tenancy with an expiry date of September 14, 2014, pursuant to section 53(2) of the Residential Tenancy Act, the notice he gave to the landlord was self-correcting to that date, and therefore the landlord did not have the right to enter the unit until the tenant had removed all his belongings and returned the keys to the landlord.

The tenant still had the right to possession of the unit until he had removed all his belongings and returned the keys to the landlord. Therefore had the landlord entered the rental unit she would technically have been breaking and entering, and trespassing.

Therefore since the tenant did not remove his belongings or return the keys to the landlord until late August 2014, and since the unit still needed cleaning and repairs, it is my finding that the tenant is liable for the full lost rental revenue as stated above.

The only portion of the landlord's claim that I will not allow is the claim for registered mail as this is a cost of the dispute resolution process and I do not have the authority to award costs other than the filing fee which I will allow.

Conclusion

I have allowed \$9404.63 of the landlords claim and therefore I have issued a monetary order against the male respondent in that amount. The remainder of this claim is dismissed without leave to reapply.

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: March 03, 2015

Residential Tenancy Branch

