



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNR, MNSD (Landlord's Application)
 MNSD, FF (Tenant's Application)

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution (the "Application") made by the Landlord and the Tenant.

The Landlord applied for a Monetary Order for unpaid rent and damage to the rental unit, and to keep the Tenants' security and pet damage deposits (the "Deposits"). One of the Tenants, referred to in this decision as "ND" (the full name appears on the front page of this decision) applied for the return of the Deposits and to recover the filing fee from the Landlord.

The Landlord made her Application against three Tenants in the tenancy, one of whom is ND, on August 12, 2014. ND made her Application on October 1, 2014. Both Applications were subsequently scheduled by the Residential Tenancy Branch to be heard at the same time in this hearing.

Preliminary Issues

The Landlord appeared for the hearing and provided affirmed testimony as well as written evidence prior to the hearing. However, there was no appearance by any of the Tenants named on the Landlord's Application during the 40 minute duration of the hearing despite ND being provided with this same date and time to hear her Application. As ND failed to appear for this hearing and present the merits of her Application, I dismiss her Application without leave to re-apply.

The Landlord testified that she had served ND with a copy of her Application and evidence by registered mail on August 20, 2014. The Landlord testified that she sent it to an address which she had come to know of where ND was residing. The Landlord testified that the documents had not been returned to her by Canada Post. The Landlord provided a copy of the Canada Post tracking number for the documents sent to ND; the Canada Post website indicates ND signed and received for these documents

on August 27, 2014. Therefore, based on the undisputed evidence of the Landlord, I am satisfied that ND was served with the Landlord's Application pursuant to Section 89(1) (c) of the *Residential Tenancy Act* (the "Act").

When the Landlord was asked about the service of her Application and documents for this hearing to the other two Tenants ("HD" and "BG"), the Landlord explained that she had served HD and BG **together** by registered mail which was returned to her by Canada Post. The Landlord could not recall how she was able to ascertain the address for HD and BG citing that it may have been provided by them during a previous hearing that took place on August 28, 2014 with a different Arbitrator (the file number for which appears on the front page of this decision). However, I note that the Landlord made this Application prior to the hearing of August 28, 2014. Therefore, the Landlord would not have had the address for HD and BG when the documents were served for her Application as the August 28, 2014 hearing had not taken place.

In examining the Landlord's evidence for the service of documents to HD and BG, I am not satisfied that the Landlord served these two respondents to an address where they could have received paperwork. Furthermore, when a party makes an Application they are responsible to serve each named respondent **individually**. Therefore, as the Landlord has failed to satisfy me that HD and BH were served in accordance with the Act, I am only prepared to issue the Landlord with a Monetary Order in the name of ND.

The Landlord was also informed that co-tenants are jointly and severally liable for their obligations in a tenancy; this means that each co-tenant cannot relinquish their duties under a tenancy agreement based on the failure of another co-tenant to undertake their responsibility under the same agreement.

It was also determined during the hearing that the Landlord had made a calculation error in the amount she was claiming on her Application. The Landlord clarified that instead of \$1,569.06 she was claiming \$1,469.06. Therefore, the amended amount and the evidence relating to this were examined in my decision as follows.

Issue(s) to be Decided

- Is the Landlord entitled to loss of rent for May, 2014?
- Is the Landlord entitled to damages caused to the unit by the Tenants?
- Is the Landlord entitled to keep all of the Tenants' security deposit in partial satisfaction of the Landlord's monetary claim?

Background and Evidence

The Landlord testified that this written tenancy agreement was for a fixed term tenancy that commenced on April 2, 2014 and was scheduled to end after March 31, 2015. The Tenants were required to pay rent of \$980.00 on the first day of each month. On April 2, 2014, the Tenants paid \$480.00 as the security deposit plus \$200.00 as the pet damage deposit. However, the Tenants vacated the rental suite on April 23, 2014.

The Landlord referred to the previous hearing of August 28, 2014, a copy of which was in NB's evidence for her Application. The Landlord explained that the previous Arbitrator determined that the Tenants did not have authority under the Act to end the tenancy. The Landlord testified that as the Tenants has left the tenancy contrary to the Act, she was unable to re-rent the suite for the following month of May, 2014 as this left her little time to advertise the rental suite for May, 2014. As a result, the Landlord now seeks to recover lost rent from the Tenants in the amount of **\$980.00**.

The Landlord testified that she had completed a move in Condition Inspection Report (the "CIR") with the Tenants on April 3, 2014 and a copy of the CIR was provided into written evidence. The Landlord testified that the rental suite had been provided to the Tenants after it had been renovated to a high standard.

However, after she had discovered that the Tenants had vacated the rental suite on April 23, 2014, she saw that the rental suite had not been cleaned. The Landlord testified that the bathroom and kitchen had not been cleaned, the floors and walls had not been washed down and the kitchen appliances were left dirty. The Landlord testified that the Tenants had not even attempted to do any cleaning of the rental suite.

The Landlord testified that she then employed a professional cleaning company to thoroughly clean the rental suite from top to bottom at a cost of **\$350.00**. The same company also conducted lawn maintenance for a cost of **\$100.00**. The Landlord provided an invoice from the cleaning company to verify these costs.

In support of this claim, the Landlord referred to the written tenancy agreement which states *"If the yard is not maintained and the landlord has to do it, the tenant agrees to pay \$100 per month for this service."* The Landlord also referred to photographic evidence she had provided prior to the hearing. While it was before me in black and white, the photographs indicated that the lawn had not been cut by the Tenants during the tenancy.

The Landlord testified that the Tenants had also damaged two broken bedroom window screens. The Landlord provided a photograph where she had removed the window screens and had placed them on the lawn area to indicate the damage to the screens and as a way of showing the length of the grass that had not been cut by the Tenants. The Landlord provided an invoice for the repair of these screens in the amount of **\$39.06**. The Landlord now seeks to recover the above costs from the Tenants in the amount of **\$1,469.09** (\$980.00 + \$100.00 + \$350.00 + \$39.06).

Analysis

I have carefully reviewed the undisputed evidence of the Landlord on the balance of probabilities as follows. I accept the Landlord's oral and written evidence that the parties had engaged into a fixed term tenancy that was to expire on March 31, 2015. In relation to ending a fixed term tenancy, Section 45(2) of the Act states:

A tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that

- (a) is not earlier than one month after the date the landlord receives the notice,
- (b) is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and
- (c) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

Therefore, as the Tenants vacated the rental suite prior to the expiry of the fixed term tenancy and had not established in the previous hearing they were entitled to do so under the Act, I find the Landlord is entitled to loss of rent. I also accept the Landlord's submission that after the Tenants had vacated the rental suite, this did not leave her enough time to mitigate her loss by advertising the rental suite for May 2015. Therefore, the Landlord is awarded **\$980.00** for May 2015 lost rent.

Section 37(2) of the Act requires a tenant to leave a rental suite reasonably clean, and undamaged except for reasonable wear and tear at the end of a tenancy. In examining the Landlord's damage claim, I find the Tenants were responsible for marinating the lawn during the tenancy as required by the tenancy agreement. I accept the Landlord's undisputed oral testimony and photographic evidence that the Tenants did not maintain

the lawn while they were in occupancy of the rental suite. Therefore, the Landlord is entitled to the **\$100.00** claimed as stipulated by the tenancy agreement.

I also accept the Landlord's undisputed oral testimony that the Tenants failed to clean the rental suite at the end of the tenancy as required by the Act. I find the move in CIR is sufficient evidence to show that the rental suite was provided reasonably clean at the start of the tenancy to the Tenants and that their hasty exit from this tenancy would suggest that the rental suite was not cleaned. Therefore, I award the Landlord **\$350.00** for the cleaning costs as verified by the invoice provided into written evidence.

I accept the Landlord's oral testimony, photographic evidence and invoice document as sufficient evidence that the Tenants damaged the two window screens which had to be repaired by the Landlord. Therefore, I award the Landlord **\$39.06** for the repair costs.

Therefore, the total amount awarded to the Landlord is **\$1,469.09** (\$980.00 + \$450.00 + \$39.06). As the Landlord already holds the Tenants' \$690.00 Deposits, I order the Landlord to retain the Deposits in partial satisfaction of the claim awarded pursuant to Section 38(4) (b) of the Act. As a result, the Landlord is awarded the balance of \$779.06 (\$1,469.09 – \$690.00).

Conclusion

The Tenants have breached the Act. Therefore, the Landlord is able to retain the Tenants' Deposits. I grant the Landlord a Monetary Order for the outstanding balance, in the amount of **\$779.06**. This order must be served on the Tenant (ND) and may then be filed and enforced in the Provincial Court (Small Claims) as an order of that court. Copies of the order are attached to the Landlords' copy of this decision. As the Tenant failed to appear for the hearing her Application is dismissed.

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 19, 2015

Residential Tenancy Branch

