

Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

<u>Dispute Codes</u> MNSD, MND, MNDC, FF

<u>Introduction</u>

This hearing was convened as a result of the landlord's application for dispute resolution under the Residential Tenancy Act ("Act"). The landlord applied for authority to keep all or part of the tenants' security deposit, a monetary order for money owed or compensation for damage or loss and for damage to the rental unit, and for recovery of the filing fee paid for this application.

The landlord's agent (hereafter "landlord") and the owner of the residential property attended the telephone conference call hearing; the tenants did not attend.

The landlord was sworn into the hearing and testified that each tenant was served with their application for dispute resolution, which included a notice of hearing, by Canada Post's registered mail service on or about November 27, 2014. The landlord supplied copies of the registered mail receipts showing the tracking numbers.

In response to my question, the landlord testified that the registered mail was sent to the forwarding address supplied by tenant "JG". The landlord was not able to confirm that this address was also the forwarding address for tenant "SJ".

Based upon the submissions of the landlord, I find that tenant JG were served notice of this hearing in a manner complying with section 89(1) of the Act and the hearing proceeded in that tenant's absence. As I could not confirm that SJ was served the landlord's application to their forwarding address, as required by section 89(1), I have excluded that tenant from any further consideration in this matter.

The landlord was provided the opportunity to present his evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me.

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I have reviewed all oral and documentary evidence before me that met the requirements of the Dispute Resolution Rules of Procedure (Rules); however, I refer to only the relevant evidence regarding the facts and issues in this decision.

Words utilizing the singular shall also include the plural and vice versa where the context requires.

Issue(s) to be Decided

Is the landlord entitled to retain the tenants' security deposit and to recover the filing fee?

Background and Evidence

The landlord submitted that this tenancy began in April 2014, that monthly rent was \$800.00, and that the tenants paid a security deposit of \$400.00 at the beginning of the tenancy. The rental unit was unit 1 of a 3 unit residential property.

In support of their application, the landlord submitted that on the morning of October 31, 2014, the tenants caused a fire in the building by one of them falling asleep on the couch with a lit cigarette. The fire department was called and in their investigation, confirmed the source of the fire was a cigarette falling into furniture in unit 1. The landlord submitted the fire department reports as confirmation.

The landlord submitted further that the damage to the residential property was extensive and has rendered the property uninhabitable as of that date as all electrical and plumbing must now be re-done to current code. The property has been condemned by the city and some of the losses incurred by the landlord have been loss of rent revenue for the 3 rental unit in the building since October 31, 2014. The residential property still is not occupied.

The landlord also mentioned other anticipated expenses totalling in excess of \$250,000.00; however, the landlord submitted that they are not seeking any relief with this application other than to keep the tenants' security deposit of \$400.00, as tenant JG submitted a written request on November 18, 2014, for a return of their security deposit.

Analysis

Under section 7(1) of the Act, if a landlord or tenant does not comply with the Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other party for damage or loss that results. Section 7(2) also requires

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that the claiming party do whatever is reasonable to minimize their loss. Under section 67 of the Act, an arbitrator may determine the amount of the damage or loss resulting from the that party not complying with the Act, the regulations or a tenancy agreement, and order that that party to pay compensation to the other party.

I find the landlord submitted sufficient evidence to demonstrate that they have incurred a loss of rent revenue far in excess of \$400.00 due to the actions of the tenants, as demonstrated by the fire department reports, and I therefore grant the landlord's request to permanently retain the tenants' security deposit.

As the landlord was successful with their application, I also grant them recovery of their filing fee of \$50.00, pursuant to section 72(1) of the Act.

To give effect to this monetary award, I grant the landlord a final, legally binding monetary order in the amount of \$50.00, which is enclosed with the landlord's Decision.

Should the tenant fail to pay the landlord this amount without delay after being served the order, the monetary order may be filed in the Provincial Court of British Columbia (Small Claims) for enforcement as an Order of that Court.

Conclusion

The landlord's application requesting to keep the tenants' security deposit is granted.

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: June 12, 2015

Residential Tenancy Branch