



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

MND, MNDC, MNSD, FF

Introduction

This hearing dealt with the landlords' application pursuant to the *Residential Tenancy Act* ("the Act") for:

- a monetary order for unpaid rent, for damage to the rental unit, and for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- authorization to retain all or a portion of the tenants' security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover the filing fee for this application from the tenants' pursuant to section 72.

Tenant JW did not attend this hearing, although the teleconference continued until 2:11 p.m. Tenant BQ and Landlord CF attended the hearing. They were both given a full opportunity to be heard, to present sworn testimony, and to make submissions. Tenant BQ testified that he was unable to speak on behalf of or represent Tenant JW. Landlord CF ("the landlord") represented both landlords.

The landlord and Tenant BQ provided evidence that both tenants moved out by agreement on November 30, 2014. Tenant BQ confirmed that he received the landlord's Application for Dispute Resolution at the address he had provided to the landlord. The landlord testified Tenant JW did not provide him with a forwarding address. He testified that he attempted to serve Tenant JW with his Application for Dispute Resolution and Notice of Hearing by registered mail to Tenant JW's mother's home address. He was unable to provide sworn testimony that Tenant JW resided at his mother's home.

Residential Tenancy Policy Guideline No. 12 provides the requirements for service of documents for dispute resolution hearings. The guideline states that,

All parties named on an application for Dispute Resolution must receive notice of proceedings. Where more than one party is named on an application for dispute resolution, each party must be served separately. Failure to serve documents in a way

recognized by the Legislation may result in the application being adjourned, dismissed with leave to reapply, or dismissed without leave to reapply. ...

The guidelines state that there are only three methods of service for an Application for Dispute Resolution. They are;

- personal service ("physically handing a copy of the document to the person being served")
- registered mail ("the address for service must be where the tenant resides at the time of mailing, or the forwarding address provided by the tenant")
- a Residential Tenancy Branch Order regarding service (ie: an order for substituted service)

Given the requirements of the *Residential Tenancy Act* and the service as described by the landlord, I do not accept that Tenant JW was deemed served with the landlords' Application for Dispute Resolution hearing package. Therefore, with respect to Tenant JW, this application is dismissed with leave to reapply.

Issue(s) to be Decided

Are the landlords entitled to a monetary order for unpaid rent, for damage to the rental unit, and for money owed or compensation for damage or loss?

Are the landlords entitled to retain all or a portion of the tenants' security deposit in partial satisfaction of any monetary order?

Are the landlords entitled to recover the filing fee for this application from the tenants?

Background and Evidence

This tenancy began between the landlords and two co-tenants on July 6, 2013. The original agreement was for a fixed term of 12 months. After the completion of the 12 month term, the tenancy was extended for a total of 5 months. The landlord testified that he continues to hold a \$700.00 security deposit paid by both tenants on July 13, 2013, at the outset of the tenancy. The landlord sought to retain the security deposit towards a monetary order totalling \$1926.48 for damage to the rental unit and monetary loss that he has incurred as a result of this tenancy. The landlord testified that the tenants vacated the rental unit on November 30, 2014. He testified that, while he was able to contact Tenant BQ, he was not able to contact Tenant JW after he vacated the residence. The landlord testified that a move-out condition inspection was done on November 30, 2014. He testified and wrote in the condition inspection report that there was dirty and smelly carpets; damage to walls; scratches to the laminate floor; a broken bi-fold closet door; and broken window as well as an unclean bathroom and a tub drain plugged. The landlord wrote on his condition inspection report and stated in his testimony that it appears no attempt was made to clean over the entire tenancy. The landlord testified that it took two weeks to clean and repair the unit in order for it to be re-rented.

Tenant BQ testified that he and his co-tenant were not given two opportunities to attend for a condition inspection as provided in the *Residential Tenancy Act*. In response, the landlord stated that the tenants were not cooperative and intentionally made him wait. He testified that it was important for him to get the rental unit cleaned and repaired so that he could re-rent and not lose rental income.

The landlords provided the following break-down of the monetary award he sought;

Item	Amount
Re-keying the lock to the unit (tenants delayed in returning all sets of keys)	\$96.13
Flooring Repair (damage to hardwood floors)	22.78
Carpet Repair (damage to carpets)	535.78
Supplies purchased to attempt to unplug tub drain	21.08
Supplies purchased to repair bathroom door (hole)	58.22
Supplies to clean exterior deck and replace light bulbs	43.87
Professional services to unplug tub drain - when landlords unable to accomplish	195.25
Purchase bi-fold doors to replace broken closet doors	60.00
Services to repair window covering (blind)	60.00
Cost to replace broken window	211.43
Cleaning services (move-out clean)	350.00
Cost to replace broken key fob (by strata corp.)	75.00
Labour to hang bathroom door; clean deck	175.00
Deduct sec deposit and interest (\$700 + 14.60)	-714.60
Filing fee	50.00
Total Monetary Order	\$1239.94

The landlord testified that, when the tenants were moving out, they both agreed that the landlord could retain the security deposit towards any cleaning or damage. Tenant BQ stated that while he felt it was reasonable that the landlords retain all or a portion of the security deposit to clean and repair damage, he testified that he did not believe that he was responsible for re-keying the suite because the keys were eventually returned and it is a cost that the landlords will often occur with new tenants in any event.

With respect to the landlords' other claims, Tenant BQ testified that;

- the majority of the unit's damage was within Tenant JW's bedroom;
- that the bulb replacement amount seems excessive in that he only recalls one or two burnt out or missing bulbs at the end of tenancy;
- that he (the tenant BQ) did some cleaning but acknowledges it wasn't the best;
- that there is no receipt for the labour costs that the landlords has submitted;
- that he acknowledges the security deposit should be retained by the landlords but does not believe any other monetary amount is owed to the landlords.

Both parties in attendance agreed in their testimony that Tenant JW was responsible for the majority of the damage to the rental unit.

Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

Retention of a security deposit by a landlord may be required in one of two ways;

- the landlord has fulfilled all obligations under section 38 with respect to condition inspection reports at move-in and move-out and is thereby allowed to make a claim against the deposit; or
- the landlord makes a claim for damages, fulfills the burden of proof and the arbitrator orders the landlord to retain the security deposit in accordance with section 72(2).

The landlords' condition inspection report, the best evidence available, shows that two keys were returned by the tenants. The landlord's testimony is that he felt it necessary to change the locks. The tenant refers to section 25 of the *Act* in that rekeying for new tenants may be required, if requested. The landlords acted prudently and out of an abundance of caution. However, I do not find that Tenant BQ took any action that would make him responsible for this cost.

The landlords' condition inspection report does not refer to a broken key fob. However, the landlords testified that when one of the tenants' key fobs was returned, it was broken. He submitted a photograph of the broken key fob. Tenant BQ provided sworn testimony that he believed both key fobs were functional at the end of their tenancy and that this damage could have occurred after the end of their tenancy. I do not find that the landlords have shown on a balance of probabilities that the tenants' damaged the key fob.

The landlords' condition inspection report refers to floor damage and he has provided undisputed sworn evidence at this hearing of floor damage. They also provided receipts with respect to floor repair in the amount of \$22.78. I find the landlords are entitled to recover \$22.78 for the floor repair.

The landlords' condition inspection report refers to the dirty, plugged tub. He has provided photographs illustrating the state of the tub. They provided receipts that indicate he tried basic drain-clearing materials before hiring professionals to unplug the drain. The tenant did not dispute this evidence. I therefore find the landlords are entitled to $\$195.25 + 21.08 = \216.33 for unplugging the tub.

The landlords' condition inspection report documents the damage to the door within Tenant JW's room. Tenant BQ acknowledged the existence of the damage. The landlords submitted a receipt for the purchase of a bi-fold door in that amount of \$83.99. I find that the landlords are entitled to recover this cost.

The move-out condition inspection report states clearly and in more than on part of the report that the residence was uncleansed and very dirty on move-out. Tenant BQ acknowledged that the cleaning had not been very good. Photographic evidence submitted by the landlords reflects a need to clean the residence before he would be able to re-rent. I find that the landlords are entitled to recover the cost of cleaning supplies and cleaning services in the amount of $\$350.00 + 43.87 = \393.87 . I also find that the landlords are entitled to recover the cost of replacement bulbs for the rental unit. It is reasonable to assume that these tenants did not change the light bulbs over the course of their 1.5 year tenancy.

The condition inspection report and the landlords' photographic evidence support his claim to replace a damaged blind. It was not identified as damaged in the move-in report and Tenant BQ raised no dispute with respect to this item. The landlords provided a receipt in the amount of \$60.00. I find that the landlords are entitled to recover this amount.

The condition inspection report and the landlords' photographs submitted also support his claim to replace a broken window. Tenant BQ did not dispute that the window was damaged. Again, however both parties agreed it was as a result of the actions of Tenant JW. I find that the landlords are entitled to recover the cost of the replacement window in the amount of \$211.43.

Tenant BQ disputed the landlords' claim for labour, submitting that the landlords had provided no invoices or record of the time that the landlord had spent on the repairs. Tenant BQ testified that the amounts submitted by the landlords have no basis in an hourly rate or otherwise. The landlord submitted labour costs for his time totalling \$175.00 for cleaning the deck of the rental unit and hanging the bathroom door. The landlord did not provide an explanation or justification for that amount provided. Tenant BQ did not dispute that the landlords had completed these jobs; the tenant only disputed the landlords' estimate of the time and costs.

I find it reasonable that the landlord be compensated for his time. I find that an hourly wage near minimum wage in the amount of \$20.00 per hour is an appropriate rate for the jobs completed by the landlords. I find that the landlords should be compensated for 1 hour to hang the bathroom door and 3 hours to clean the deck for a total of 4 hours @ \$20.00 per hour. I find the landlords entitled to recover \$80.00 for Landlord CF's labour.

I find that the landlords are entitled to recover costs, expenses and labour totalling \$1140.40.

I include the policy with respect to co-tenants as it is relevant to this decision. Unless evidence to the contrary is provided, there is a presumption in law of a joint tenancy. Joint tenants are joint and severally liable for monies owed to the landlord relating to the tenancy. In this case, the fact that the rent was split, the agreement to rent at this unit and pay rent under agreed upon conditions, all aspects of the arrangement reflect a joint tenancy agreement. Both parties in attendance at this hearing agree that the majority of the damage done to the rental unit is in fact as a result of actions by Tenant JW. Both parties in attendance also agreed that Tenant JW had contributed to the provision of the security deposit.

Residential Tenancy Policy Guideline No. 13 clarifies the intention of the legislation stating;

Co-tenants are jointly and severally liable for any debts or damages relating to the tenancy. This means that the landlord can recover the full amount of rent, utilities or any damages from all or any one of the tenants. The responsibility falls to the tenants to apportion among themselves the amount owing to the landlord...

According to the evidence at this hearing, both tenants contributed to the security deposit. I find that, given the testimony of both parties at this hearing, the tenants are jointly and severally liable for the landlords' costs. While Tenant JW was not sufficiently served for this hearing, I find that the landlords are entitled to retain the tenants' (jointly given and jointly held) security deposit towards their monetary award. I note that there is no interest payable for the deposit over the period of this tenancy.

As the landlords were successful in his application, I find that the landlords are also entitled to recover the filing fee for this application.

Conclusion

I issue a monetary order in favour of the landlords against Tenant BQ as follows;

Item	Amount
Floors – repairs beyond wear and tear	\$22.78
Unplugging the tub – supplies and services	216.33
Closet door replacement	83.99
Cleaning of rental unit	393.87
Blind repair	60.00
Window replacement	211.43
Landlords' labour	80.00
Less Security Deposit	-700.00
Recovery of Filing Fee for this Application	50.00
Total Monetary Order	\$418.40

The landlords are provided with this Order in the above terms and the tenant(s) must be served with this Order as soon as possible. Should the tenant(s) fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and 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: August 25, 2015

Residential Tenancy Branch

