



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNSD, MNDC, FF

Introduction

This was a hearing with respect to the landlord's application for a monetary order and an order to retain the security deposit. The hearing was conducted by conference call. The landlord and the named tenants called in and participated in the hearing

Issue(s) to be Decided

Is the landlord entitled to a monetary award and if so, in what amount?
Is the landlord entitled to retain all or part of the security deposit?

Background and Evidence

The rental unit is a duplex in CR. The tenancy began in March, 2009. The initial tenants named in a tenancy agreement were Mr. D.F. and the respondent C.F. The monthly rent was \$850.00 and the tenant paid a security deposit of \$425.00. The tenant D.F. moved out of the rental unit on an unspecified date. The landlord signed a separate tenancy with the tenant M.S. on March 21, 2014 for a tenancy said to commence on March 21, 2014, with rent in the amount of \$850.00. The agreement referred to a security deposit of \$425.00. The tenancy ended in October, 2014. The landlord said that the tenants operated a marijuana grow-op in the rental unit and caused extensive damage. He said that the pending sale of the rental property collapsed because of the damage caused by the tenants. The landlord made the following monetary claim:

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| • House sale collapse, amount of deposit returned: | \$5,000.00 |
| • Notary charges due to collapsed sale: | \$845.24 |
| • Loss of rent revenue for November, 2014: | \$1,000.00 |
| • New tenant's work for clean-up and repairs: | \$1,525.00 |
| • Flooring & home depot: | \$420.00 |
| • Pest control – bug infestation: | \$300.00 |

Total:	\$9,090.24
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The landlord submitted photographs of the rental unit to show what he said was the damage caused by the tenants and the mess left behind. He submitted a copy of the contract of purchase and sale of the rental property. The contract referred to a deposit of \$5,000.00. The sale was set to complete on October 31, 2014. The balance of the purchase price was to be financed by an agreement for sale in favour of the seller with monthly payments based on a 25 year amortization period. The contract of purchase and sale contained several subject conditions in favour of the purchaser.

The landlord testified that the sale collapsed because the tenants had used the property as a grow-op. The landlord did not provide particulars to establish why the sale collapsed. The property has not been sold. The landlord did not submit evidence to show that the property has been re-listed for sale. The landlord submitted a typed statement said to be from T.B., the landlord's new tenant who performed work to clean and repair the rental unit. She said that there was garbage and materials from the grow-op left behind, including planter pots, barrels and halogen lights. Soil was dumped all over the floors. The carpets had to be ripped out. There were many holes cut in the walls. The tenant said she spent more than a month to clean, sanitize and disinfect the house. She said that there are still more repairs that need to be performed.

The landlord submitted handwritten invoices from T.B. One invoice dated December 15, 2014 in the amount of \$425.00 was for "repair damage to gyproc, seal & paint, all caused by grow-op installation." Another invoice in the amount of \$1,000 was for: clean and remove old furniture – to dump, remove carpets ruined by pets. Wash all wall & floors, clean and scour fridge and stove and replace most light fixtures. The invoice was said to be for 100 hours of work at \$10 per hour. The landlord submitted another invoice for \$100.00 for dump fees and transportation. The landlord submitted invoices for flooring and repair materials in the amounts of \$369.59 and \$50.40. He provided a bill for \$315.00 said to be for the treatment of silverfish in both units of the duplex.

The tenant C.F. acknowledged that there was a grow-op in the rental unit. He said it was legal and conducted with the knowledge of the landlord. C.F. testified that the tenant M.S. did not move into the rental unit until June, 2014 and the grow-op had been dismantled before M.S. became a tenant. The landlord did not perform any condition inspection before M.S. began his tenancy and there was no move-in or move out condition inspection reports. The tenant blamed damage to the carpet on the former tenant, D.F. who was not named in the landlord's application.

Analysis

The landlord's claims for the collapse of his real estate sale are not recoverable from his tenants. The reason for the sale collapse was not established and the landlord remains the owner of the property. The deposit that was refunded to the intended purchaser is not a loss for which the tenants are responsible because the landlord is free to list the property for sale and seek out another purchaser.

Despite the absence of condition inspection reports, the landlord's evidence has satisfied me that the rental unit was extensively damaged and that the damage exceeded normal wear and tear. The landlord's testimony, the witness statements and the photographic evidence support the claims for cleaning and repairs.

I find that the landlord is entitled to recover loss of revenue for November in the amount of \$850.00, but not as claimed in the amount of \$1,000.00. I allow the claims for amounts paid to the new tenant for cleanup and repairs and removal of garbage in the amount of \$1,525.00. The amounts claimed for the work are modest. I also allow the claim for floor materials and other supplies in the amount of \$425.00. I find that the treatment of the rental unit for an insect infestation was more than likely necessary because the rental unit was used as a grow-op; I allow the claim for an insect treatment in the amount of \$315.00. All other monetary claims by the landlord are dismissed without leave to reapply. The total award to the landlord is the sum of \$3,115.00. The landlord is entitled to recover \$50.00 of the \$100.00 filing fee for this application, for a total award of \$3,165.00.

I accept the evidence presented by the tenants and I find that the tenant M.S. moved in late in the tenancy and I find that the tenant M.S. cannot be held liable for damage that occurred before he became a tenant, particularly when the landlord did not conduct a condition inspection when M.S. became a tenant. The monetary claim is therefore allowed as against the tenant C.F. only.

Conclusion

I order that the landlord retain the security deposit of \$425.00 in partial satisfaction of this award and I grant the landlord an order under section 67 for the balance of \$2,740.00 as against the respondent, C.F. This order may be registered in the Small Claims 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: October 19, 2015

Residential Tenancy Branch

