



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding HOMELIFE GLENAYRE REALTY CHILLIWACK LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MND, MNSD, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord for a monetary order for compensation under the Act and the tenancy agreement, for damage and cleaning of the rental unit, for an order to retain the security deposit in partial satisfaction of the claim and to recover the filing fee for the Application. The Application was made under the *Residential Tenancy Act* (the “Act”).

One of the Tenants and an Agent for the Landlord appeared at the hearing. The hearing process was explained and the participants were asked if they had any questions. Both parties provided affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary Issues

As only one of the two Tenants were present for the hearing (referred to as “J.G.” herein), service of the Notice of Hearing and Application documents on the non-appearing Tenant (referred to as “A.P.” herein) was in issue.

The Agent for the Landlord testified that the parent of J.G. attended on behalf of both Tenants when the outgoing condition inspection report was performed. This parent agreed to the condition of the rental unit at the end of the tenancy, signed over the security deposit against an insurance deductible owed by the Tenants and provided a forwarding address for the Tenants in writing to the Agent. The Agent testified that she was informed the parent was providing the forwarding address for both Tenants and was representing them both at the outgoing report.

In evidence the Landlord supplied copies of two registered mail receipts and two envelopes, showing that each Tenant had been served by registered mail, sent on July 24, 2015. It appears that this mail was returned to the Landlord as unclaimed. I note

that under section 90 of the Act registered mail is deemed served five days after mailing.

The Agents for the Landlord also submitted evidence that they then served the Tenants by personally delivering the Notice of Hearing and Application documents and placing them in the mailbox at the forwarding address provided on behalf of the Tenants. They submitted that there were occupants home at the time of the delivery into the mailbox, as they could see them peering through the curtains but would not answer the door.

The appearing J.G. testified that she received the documents and took a picture of the Notice of Hearing and sent it to the other Tenant, A.P. She further testified that she called her on the phone and reminded her on her social media page of the hearing. She testified that A.P. was well informed about the hearing.

Based on section 90 of the Act, and the other evidence described above, I find that the Notice of Hearing and Application documents have been sufficiently served for the purposes of the Act on both Tenants, pursuant to section 71 of the Act.

I note it was explained to the Tenant J.G. that the Tenants were jointly and severally liable under the Act and tenancy agreement, and joint and several liability was explained as well.

Issue(s) to be Decided

Is the Landlord entitled to monetary compensation from the Tenants?

Background and Evidence

This tenancy began on February 1, 2014, with the parties entering into a written tenancy agreement. The monthly rent was \$1,200.00, and the Tenants paid a security deposit of \$600.00. Incoming and outgoing condition inspection reports were performed in accordance with the Act. The subject rental unit is in a strata building, and the Agent appearing was there on behalf of the rental unit owner.

On or about July 13, 2014, a flood occurred in the rental unit and water damaged the rental unit. Apparently the Tenant A.P. had a cat in the rental unit and this cat turned on the kitchen faucet tap and the sink flooded water when the Tenants were not home. A statement from the strata building property caretaker indicates that he had a conversation apparently with the Tenant AP when he entered the rental unit to cease the flood and found she was removing dirty dishes from the sink in order to open the water drain.

The Agent for the Landlord and Tenant J.G. both testified that the Tenant AP had “taken ownership” for the flood occurring.

The Landlord is claiming **\$5,000.00** for the insurance deductible for the restoration, **\$150.00** for the emergency attendance of the strata building property caretaker, **\$94.50** for minor cleaning of the rental unit, and **\$3.35** to have a key cut, as the Tenant AP returned the wrong key to the Landlord, and the filing fee for the Application of \$50.00. The Landlord is claiming to retain the security deposit of **\$600.00** in partial satisfaction of the claims. The total claim by the Landlord is \$4,697.85, after the deduction of the security deposit.

The outgoing condition inspection report was signed by the agent for the Tenants agreeing to the damage done, to the cleaning and to forfeit the security deposit.

The appearing Tenant J.G. acknowledged these amounts and did not dispute liability. She testified that the Tenant A.P. had acknowledged she was responsible for the flood.

Analysis

Based on all of the above, the undisputed evidence and testimony, and on a balance of probabilities, I find as follows.

I find the Tenants are responsible for the flood in the rental unit, and did not completely clean the unit, or return the key to the Agent and this has caused losses to the Landlord. The Tenant A.P. acknowledged these losses to an Agent for the Landlord. The Tenant J.G. did not dispute the evidence of the Landlord and agreed that A.P. admitted liability for the causing the flood.

All of the evidence before me indicates that there was a flood in the rental unit and Tenant A.P. has admitted liability for this. However, as explained to the Tenant J.G., under the Act and tenancy agreement both Tenants are jointly and severally liable for these losses. It will be up to the Tenants to apportion their liability to the Landlord between themselves.

Section 67 of the Residential Tenancy Act states:

Without limiting the general authority in section 62(3) [*director's authority*], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

[Reproduced as written.]

Therefore, I find that the Landlord has established a total claim of **\$5,297.88** comprised of **\$5,000.00** for the insurance deductible, **\$150.00** for the emergency attendance of the caretaker, **\$94.50** for minor cleaning of the rental unit, and **\$3.35** to have a key cut, and the filing fee for the Application of **\$50.00**.

I order that the Landlord retain the deposit and interest of **\$600.00** in partial satisfaction of the claim and I grant the Landlord an order under section 67 for the balance due of **\$4,697.88**.

This order must be served on both Tenants and may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

Conclusion

The Tenants are liable for the losses of the Landlord due to the flood in the rental unit, for cleaning the rental unit and for the cost of replacing a key. The Landlord is granted a monetary order in the amount of **\$4,697.88**. The order is enforceable in Provincial Court.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: December 01, 2015

Residential Tenancy Branch

