



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding THE SCOTSMAN MOTEL
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MND MNSD MNDC FF

Introduction

This hearing was convened to hear matters pertaining to an Application for Dispute Resolution filed by the Tenants on October 7, 2015. The Tenants filed seeking an order to cancel a 2 Month Notice to end tenancy for landlord's use and to recover the cost of his filing fee from the Landlord.

The hearing was conducted via teleconference and was attended by the Landlord. No one was in attendance on behalf of the respondent Tenants.

The application listed the Landlord who was in attendance and the corporate Landlord's name. Therefore, for the remainder of this decision, terms or references to the Landlords importing the singular shall include the plural and vice versa, except where the context indicates otherwise.

Section 89(1) of the *Residential Tenancy Act* stipulates how an application for dispute resolution must be served to the respondent as follows:

An application for dispute resolution or a decision of the director to proceed with a review under Division 2 of Part 5, when required to be given to one party by another, must be given in one of the following ways:

- (a) by leaving a copy with the person;
- (b) if the person is a landlord, by leaving a copy with an agent of the landlord;
- (c) by sending a copy by registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord;
- (d) if the person is a tenant, by sending a copy by registered mail to a forwarding address provided by the tenant;
- (e) as ordered by the director under section 71 (1) [*director's orders: delivery and service of documents*].

The Residential Tenancy Rules of Procedure 3.1 determines the method of service for hearing documents and stipulates that the applicant must, within 3 days of the hearing

package being made available by the Residential Tenancy Branch, serve each respondent with copies of the application and all hearing documents in accordance with the Act.

The Landlord testified their application, evidence, and notice of hearing documents were sent in one registered mail package on July 9, 2015. That package was addressed to both Tenants. The Landlord argued that he sent only one package because the Tenants were a couple.

The Canada Post tracking information was submitted in the Landlord's oral submissions. The Landlord testified that had checked the Canada Post website and confirmed that the Tenant, A.G., signed for the package on July 13, 2015. Accordingly, I find the Tenant A.G. was sufficiently served notice of the Landlord's application and this hearing in accordance with section 89 of the Act.

Based on the above, there was insufficient evidence to prove the Tenant B.B. was sufficiently served notice of the application and hearing in accordance with section 89 of the Act. Therefore, I find that the request for a Monetary Order against both Tenants must be amended to include only the Tenant A.G., who had been properly served with Notice of this Proceeding.

As the second Tenant B.B. had not been properly served the Application for Dispute Resolution as required, the monetary claim against her is dismissed without leave to reapply.

On July 8, 2015 the Landlord submitted 19 pages of evidence to the Residential Tenancy Branch with their application for Dispute Resolution. The Landlord affirmed that these documents were served upon the Tenant in the same package as their application. As such, I accepted those documents as evidence for these proceedings.

Issue(s) to be Decided

Has the Landlord proven entitlement to monetary compensation?

Background and Evidence

The Landlord submitted evidence that the Tenants entered into a fixed term tenancy agreement that began on June 1, 2015 and was set to continue on a month to month basis or another fixed term after July 1, 2015. Rent in the amount of \$750.00 was payable on or before the first of each month. On June 1, 2015 the Tenants paid \$375.00 as the security deposit no pet deposit was required as pets were not allowed.

A move in condition inspection report was completed and signed in the presence of both parties on June 1, 2015.

The tenancy agreement was submitted into evidence and indicated there was an addendum which consisted of 4 additional pages. Copies of that addendum were submitted into evidence and show that each Tenant initialed each section of the addendum.

An itemized list and cost of linens and towels that were provided in the rental unit was also initialed by each Tenant on June 2, 2015 and submitted into evidence.

The Landlord submitted that the housekeeper went into the rental unit to conduct the monthly inspection and found a cat litter box. The Landlord attempted to contact the Tenants to discuss the no pet policy; however, they were not able to contact either Tenant. Shortly afterwards, near the end of June 2015, the Tenants appeared at an employee's unit, prior to business hours, and returned the keys stating they moved out

The Tenants did not return the keys in a normal fashion so the Landlord was not able to schedule a move out inspection with them. When the Landlord conducted the inspection on their own they found the unit had been left dirty, infested with fleas, and the Tenants had stained the sheets, and the linens in a manner in which they could not be cleaned. As a result the Landlord sought \$425.60 in monetary compensation which is comprised of the follows:

\$40.00	(2 x \$20.00) for two sets of queen size sheets that stained
\$10.00	to replace the bath mat that was stained
\$5.00	(2 x \$2.50) for the two face cloths that were stained
\$10.00	(2 x \$5.00) for the two hand towel that were stained
\$250.00	Based on \$25.00/hr for 10 hours to steam clean the carpet and rid the room of fleas, odor and cat hair
\$75.00	Based on \$25.00/hr for 3 hours to conduct extra cleaning

The Landlord testified that they have their own industrial laundry facilities and they were not able to clean the stains from the linens. They also have their own industrial steamer that they use on carpets and beds to kill bugs such as fleas. They also have a carpet cleaner they used on the carpet after they killed the fleas with the steamer. All work was done by the Landlord's staff which is why the Landlord based the claim on the number of hours it took to clean the unit.

Analysis

Section 7 of the Act provides as follows in respect to claims for monetary losses and for damages made herein:

- 7(1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.
- 7(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or

their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

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.

Section 37(2) of the Act provides that when a tenant vacates a rental unit the tenant must leave the rental unit reasonably clean and undamaged except for reasonable wear and tear; and must return all keys to the Landlord.

After careful consideration of the foregoing, documentary evidence, and in the absence of the Tenant, I accepted the undisputed version of events submitted by the Landlord which was supported by their evidence.

Based on the above, I accept that the Tenants left the rental unit unclean, the linens stained and the carpet dirty with fleas, in breach of section 37 of the *Act*. Accordingly, I find there to be sufficient evidence to prove the Landlord's claim and I award them costs for cleaning and replacement of the linens in the amount of **\$425.60**.

The Landlords have succeeded with their application; therefore, I award recovery of the **\$50.00** filing fee, pursuant to section 72(1) of the Act.

Monetary Order – This monetary award meets the criteria under section 72(2)(b) of the *Act* to be offset against the Tenant's security deposit plus interest as follows:

Cleaning and Linen Replacement	\$ 425.60
Filing Fee	<u>50.00</u>
SUBTOTAL	\$ 475.60
LESS: Security Deposit \$375.00 + Interest \$0.00	<u>-375.00</u>
Offset amount due to the Landlord	<u>\$ 100.60</u>

Conclusion

The Landlord was not able to prove the Tenant B.B. was sufficiently served notice of this proceeding. As such the monetary claim against B.B. was dismissed, without leave to reapply.

The application proceeded against the Tenant A.G. who was sufficiently served notice of this proceeding. The Landlord succeeded with their application and was awarded monetary compensation of \$475.60 which was offset against the Tenant's \$375.00 security deposit, leaving a balance owed to the Landlord of \$100.60.

The Landlord has been issued a Monetary Order in the amount of **\$100.60**. This Order is legally binding and must be served upon the Tenant A.G. In the event that the Tenant does not comply with this Order it may be filed with 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: December 21, 2015

Residential Tenancy Branch

