



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNR, MNDC, MNSD, FF

Introduction

This hearing dealt with the landlord's 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 tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38;
- authorization to recover his/her/their/its filing fee for this application from the tenant pursuant to section 72.

The landlord V.J, agent for S.J. (the landlords) attended the hearing via conference and provided affirmed testimony. The tenant, J.L. attended the hearing via conference call and submitted no documentary evidence. The tenant, D.N. did not attend or submit any documentary evidence. The landlords stated that both tenants were served with the notice of hearing package and the submitted documentary evidence via Canada Post Registered Mail on September 7, 2016. The landlord submitted copies of both Canada Post Customer Receipt Tracking labels as confirmation. The tenant, J.L. confirmed service as claimed by the landlord. I accept the undisputed affirmed evidence of the landlord and the tenant, J.L.'s supporting direct testimony that both parties were properly served as per sections 88 and 89 of the Act. Although the tenant, D.N. failed to attend the hearing, I find based upon the undisputed affirmed evidence of both the landlords and the tenant, J.L. that the tenant, D.N. has been sufficiently served as per section 90 of the Act 5 days after service on September 12, 2016.

I note that during the hearing the landlords referred to another dispute resolution hearing in which an order of possession and a monetary order for unpaid rent was granted. In that file the landlord applied for and received a monetary claim for unpaid rent for July 2016 of \$1,000.00. As such, I find that the landlords' monetary claim for July 2016 rent of \$1,000.00 is a duplicate and that this portion of the landlords'

application is dismissed as this portion of the monetary claim has already been decided upon in that file.

Issue(s) to be Decided

Are the landlords entitled to a monetary order for damage, for unpaid rent and utilities, for money owed or compensation for damage or loss and recovery of the filing fee?
Are the landlords entitled to retain all or part of the security deposit?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

This tenancy began on March 1, 2016 on a fixed term tenancy ending on May 30, 2016. As shown by the submitted copy of the signed tenancy agreement dated February 20, 2016. The monthly rent was \$2,000.00 payable on the 1st day of each month and a security deposit of \$1,000.00 was paid on February 20, 2016. No condition inspection reports for the move-in or the move-out were completed.

The landlords seek a monetary claim of \$8,000.00 which consists of:

\$2,000.00	Unpaid Rent, August 2016
\$257.70	Unpaid Utilities, Gas/Hydro, April/May 2016
\$199.00	Unpaid Utilities, Gas/Hydro, May/July 2016
\$150.00	Replace Locks
\$500.00	vinyl siding
\$700.00	entrance door
\$200.00	labor
\$600.00	stove
\$1,000.00	drywall (paint \$500.00)
\$500.00	broken windows

It was clarified with both parties that the landlords' monetary claim totals \$6,106.70 and that the landlord stated that these amounts were based upon estimates. The landlords provided testimony that the monetary claim is more accurately reflected on his monetary worksheet. A review of the monetary worksheet shows that the landlords' monetary claim totals \$14,105.53 which consists of:

\$8,557.65	Damages as listed on the submitted estimate
\$15.33	Recovery of Registered Mail Fee

\$100.00	Recovery of Filing Fee
\$339.34	Unpaid Utilities, Hydro
\$93.21	Unpaid Utilities, Gas
\$5,000.00	Unpaid Rent, ½ July, August and September of 2016

It was again clarified with both parties that the landlords' monetary claim would be limited to the amount applied for of \$8,000.00 as the landlords failed to apply to amend the application for dispute increasing the monetary claim. It was also clarified that the landlords' monetary claim regarding the Registered Mail Fee was not recoverable under section 72 of the Act regarding litigation costs.

Both parties indicated their understanding and landlords chose to proceed with the limited monetary claim of \$8,000.00 which consists of:

\$8,557.65	Damages
\$339.34	Unpaid Hydro
\$93.21	Unpaid Gas
\$4,000.00	Unpaid Rent, August and September 2016

Both parties confirmed that the tenant, J.L. vacated the rental premises sometime during August 2016 and that the tenant's co-tenant, D.N. vacated approximately 20 days later in September of 2016.

The landlords stated that after the tenants had vacated the rental unit the landlords discovered extensive damages to the rental premises which resulted in an estimate of costs to repair them for \$8,557.65. The tenant, J.L. argues that everything was fine and that he would not be responsible for any damages caused as his tenancy ended when he vacated the rental unit. The landlords in support of this claim has provided a DVD which shows a series of photographs of the rental unit prior to the start of the tenancy and of photographs showing the condition of the rental unit after the tenancy ended. The landlords also rely upon the submitted copy of the estimate by his contractor which shows a list of the damages that required repair/replacement.

The landlords also seek recovery of unpaid utilities of \$339.34 and \$93.21 for Hydro and Gas for the period between April and July. The tenant, J.L. disputes this stating that he has paid his share of the utilities to the landlord. The landlords dispute this claim stating that no utilities were paid for this period by either tenant. The tenant argued that the landlord had provided direct testimony that the tenant, J.L. had made periodic \$1,000.00 payments to the landlords. The landlords confirmed this, but clarified that these payments were for rent and not utilities.

The landlord seeks unpaid rent of \$4,000.00 for August and September of 2016 (\$2,000.00 each month). The tenant, J.L. argued that he had vacated the rental unit in August 2016 and was not responsible for any unpaid rent. The landlord clarified that the tenant, J.L. and his co-tenant were equally responsible for the tenancy until possession of the rental unit was returned to the landlord as the co-tenant occupied the rental unit until well into September 2016.

The tenant re-iterated that since he had vacated the rental unit in August 2016 that he was no longer responsible for rent. The tenant also stated that he had made cash payments to the landlord regarding the utilities and that he had always made sure his share of the rent and utilities were paid to the landlords.

Analysis

On the basis of the landlords' documentary evidence, the uncontested and affirmed testimony of the landlord and the tenant, J.L. I find that the tenants to this tenancy are J.L. and D.N.

Section 6(1) sets out that the rights, obligations and prohibitions under the Act are enforceable between a landlord and tenant under a tenancy agreement. "Tenancy agreement" is defined in section 1 of the Act:

"tenancy agreement" means an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a rental unit, use of common areas and services and facilities, and includes a licence to occupy a rental unit;

A tenancy agreement begins when the landlord and tenant enter into the tenancy agreement. "Tenancy" is also defined in section 1 of the Act:

"tenancy" means a tenant's right to possession of a rental unit under a tenancy agreement;

Because the tenancy agreement began on March 1, 2016, this is when the provisions of the Act became enforceable in the relationship between both the tenants and both the landlords.

Residential Tenancy Policy Guideline #13, the Rights and Responsibilities of Co-Tenants state,

This Guideline clarifies the rights and responsibilities relating to multiple tenants renting premises under one tenancy agreement.

A tenant is the person who has signed a tenancy agreement to rent residential premises. If there is no written agreement, the person who made an oral agreement to rent the premises and pay the rent is the tenant. **Co-tenants are two or more tenants who rent the same property under the same tenancy agreement. Co-tenants are jointly responsible for meeting the terms of the tenancy agreement.** Co-tenants also have equal rights under the tenancy agreement.

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.

Where co-tenants have entered into a fixed term lease agreement, and one tenant moves out before the end of the term, that tenant remains responsible for the lease until the end of the term or when possession of the rental unit is returned to the landlord. If the landlord and tenant sign a written agreement to end the lease agreement, or if a new tenant moves in and a new tenancy agreement is signed, the first lease agreement is no longer in effect.

In this case, it is clear that both the tenant, J.L. and D.N. entered into a single tenancy agreement with the landlords as shown by the submitted copy of the signed tenancy agreement. I also find that in the absence of any evidence to the contrary, the tenant, J.L. vacated the premises while the tenant, D.N. continued to occupy the rental unit into September 2016. As such both tenants are jointly responsible for unpaid rent, unpaid utilities and any damages caused until the landlord was given possession of the rental unit.

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. In this case, the onus is on the landlord to prove on the balance of probabilities that the tenant caused the damage and that it was beyond reasonable wear and tear that could be expected for a rental unit of this age.

I accept the undisputed affirmed evidence of the landlords that the tenants failed to pay rent for August and September of 2016 for \$4,000.00. I also find on a balance of probabilities that the tenants failed to pay any utilities (Hydro/Gas) for the period between April and July totalling, \$432.55. I also find on a balance of probabilities that

the landlord has provided sufficient evidence to satisfy me that the tenants left the rental unit damaged which required an estimated \$8,557.75 in repairs. I find that the landlords have established a total monetary claim of \$12,990.10. However, as the landlords monetary claim is limited to \$8,000.00 as clarified with both parties the landlords are entitled to a monetary claim of \$8,000.00.

The landlords having been successful are entitled to recovery of the \$100.00 filing fee. I also authorize the landlord to retain the \$1,000.00 security deposit in partial satisfaction of this claim.

Conclusion

The landlord is granted a monetary order for \$7,100.00.

This order must be served upon the tenants. Should the tenants fail to comply with the order, the 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: February 16, 2017

Residential Tenancy Branch