



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding AQUILINI PROPERTIES LP
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MND, MNR, MNSD, MNDC, FF

Introduction

This hearing was convened by way of conference call in response to the Landlord's Application for Dispute Resolution (the "Application") filed on November 23, 2016 for a Monetary Order for: damage to the rental unit; for unpaid rent; for money owed or compensation for damage or loss under the *Residential Tenancy Act* (the "Act"), regulation or tenancy agreement; and to keep the Tenants' security deposit.

An agent for the Landlords (the "Landlord") appeared for the hearing and provided evidence prior to the hearing. However, there was no appearance for the Tenant during the 20 minute hearing. Therefore, I turned my mind to the service of the documents by the Landlord for this hearing.

The Landlord testified that she served the Tenant, with whom she did the move out condition inspection report with at the end of the tenancy, with a copy of the Application and the Hearing Package to the forwarding address provided by that Tenant. This was served by registered mail on November 25, 2016. The Landlord provided a copy of the Canada Post tracking number as evidence to verify this method of service. The Landlord stated that the documents had been returned back to her as unclaimed because the mailing address the Tenant provided was no longer valid. The Landlord provided a photograph of the returned envelope into evidence.

Section 90(a) of the Act provides that a document is deemed to have been received five days after it is mailed. A party may not avoid service through a failure or neglect to pick up mail. As a result, based on the undisputed evidence of the Landlord, I find the Tenant was deemed served with the Landlord's Application on November 30, 2016 pursuant to the Act.

At the onset of the hearing, the Landlord confirmed that she wanted to also claim the filing fee for this Application as part of her monetary claim.

Issue(s) to be Decided

- Is the Landlord entitled to unpaid rent and an insufficient funds fee?
- Is the Landlord entitled to the costs resulting from damage to the rental unit?
- Is the Landlord entitled to keep the Tenant's security deposit in partial satisfaction of the Landlord's monetary claim?

Background and Evidence

The Landlord testified that this single tenancy for three tenants started on December 1, 2015 for a fixed term of one year which was due to expire on November 30, 2016. Rent was payable by the Tenants in the amount of \$2,785.00 on the first day of each month. Pursuant to the agreement the Tenants were provided with additional storage at a cost of \$15.00 per month. The Tenants paid a security deposit in the amount of \$1,392.50 at the start of the tenancy which the Landlord still retains in trust.

The Landlord testified that two of the Tenants vacated the rental unit after a formal request to end the tenancy by mutual agreement was not authorized. The Tenants were given authority to sublet or assign the fixed term lease but did not. The third Tenant (the respondent named on the Application) vacated the rental unit on October 31, 2016 and returned to the rental unit on November 17, 2016 to complete a move out condition inspection with the Landlord.

The Landlord confirmed that despite several negotiations and attempts to end the tenancy in accordance with the Act, the Tenant did not provide any written notice to end the tenancy for October 31, 2016. The Landlord testified that the Tenant continued to retain control and possession of the rental unit until the keys were returned to the Landlord on November 17, 2016.

The Landlord testified that a move in Condition Inspection Report was completed with the Tenant on November 17, 2016 and the Tenant provided a forwarding address which the Landlord used to file the Application on November 23, 2016.

The Landlord testified the Tenant's rent cheque and money for storage for November 2016 bounced. The Landlord now seeks to claim **\$2,785.00** for November 2016 rent and **\$15.00** for storage which the Tenant failed to pay. In addition, the Landlord referred to clause 2 of the addendum to the tenancy agreement which requires the Tenant to pay a late rent fee of \$25.00 for the return of a non-sufficient funds cheque. As a result, the Landlord now claims **\$25.00** for the bounced cheque for November 2016.

The Landlord testified that in July 2016, the Tenants notified of damage to the door on the master bedroom which had to be replaced. The Landlord examined the damage and provided photographs of this into evidence. The Landlord explained that the work to undertake the repair, which included the cost of purchasing and installing a door, was **\$286.40**. The Landlord provided this invoice into evidence and testified that the damage had been caused by the Tenants.

The Landlord testified that at the start of the tenancy, the Tenants were given three sets of keys for each of them. The Landlord testified that that when the Tenant appeared for the November 17, 2016 condition inspection, only two sets were returned back. Therefore the Landlord had to get all the locks on the rental unit rekeyed at a cost of **\$134.90**. The Landlord provided a receipt for these costs into evidence.

The Landlord testified that during the last period of the tenancy, the Tenant had an occupant residing in the rental unit without the Landlord's consent. The Landlord became aware of this when one of the Tenants informed of a leak to the washing machine. When the Landlord's building manager went to investigate the problem, he learnt from the occupant that he had been using the washing machine for approximately two days which had been leaking onto the floor and that the occupant was propping up the door using a stick whilst running the washing machine.

The Landlord testified that the leaking caused so much water accumulation and damage to the wood flooring that they had to get a restoration company to come in and dry up the extensive water damage. In addition, the flooring had to be replaced. The Landlord provided photographs of the damage that had been caused to the wood flooring and testified that they were one and a half years in age.

The Landlord provided the following invoices into evidence; **\$966.00** for replacement and installation of new flooring; **\$210.00** for the repair to the washer door which informs the damage was caused by "inappropriate use"; and **\$435.56** for flood mitigation. As a result, the Landlord now seeks to claim a total amount of **\$5,117.86** (\$2,785.00 + \$15.00 + \$25.00 + \$134.90 + \$386.40 + \$370.00 + \$435.56 + \$966.00).

Analysis

I find the Landlord filed the Application to keep the Tenants' security deposit within the 15 day time limit provided for by Section 38(1) of the Act. Section 26(1) of the Act requires a tenant to pay rent under a tenancy agreement whether or not the landlord complies with the Act. In this case, the Tenants were all in a fixed term tenancy as Co-

Tenants who are jointly and severally liable for the terms of the tenancy agreement and for any claim made by the Landlord.

The Tenants were in a fixed term tenancy until November 30, 2016 and therefore had an obligation to pay rent and storage costs under those terms. There is insufficient evidence before me that the Tenant ended the tenancy pursuant to the Act and still retained control and possession of the rental unit going into the November 2016 period. As the Tenant's rent cheque and storage costs bounced, I grant the Landlord November 2016 rent in the amount of **\$2,785.00** and **\$15.00** for the monthly storage charge.

Section 7(1) (d) of the Residential Tenancy Regulation allows a landlord to charge an administration fee up to \$25.00 for the return of a tenant's cheque by a financial institution if the tenancy agreement provides for this fee. The Landlord provided a copy of the addendum to the tenancy agreement which provides for this fee. As the Tenant failed to pay rent for November 2016, I find the Landlord is now entitled to the **\$25.00** fee claimed.

Section 37(2) (b) of the Act requires a tenant to return all the keys and means of access to the residential property under their possession or control at the end of the tenancy to the landlord. In this case, I am satisfied by the Landlord's undisputed evidence that the Tenant failed to return one remaining set of keys to the rental unit. I concur that the locks to the rental unit had to be changed and I am satisfied by the Landlord's cost of **\$134.90** incurred to remedy this issue. The Landlord is granted this cost.

Section 32(3) of the Act requires that a tenant must repair damage to the rental unit that is caused by the actions and neglect of the tenancy or a person permitted on the property. Section 37(2) of the Act also requires a tenant to leave a rental suite undamaged at the end of a tenancy.

I am satisfied by the Landlord's undisputed evidence along with the invoice evidence regarding the claim for damages to the rental unit. I accept the contractor's invoice which shows that the damage to the washing machine was caused by neglect through inappropriate use and that this then caused further damage to the wood flooring which had to be remediated. Accordingly, I grant the Landlord's claim of **\$370.00** for the washing machine repair and **\$435.56** for flood clean up.

In relation to the Landlord's claim for replacement of the wood flooring, I accept the Landlord's undisputed evidence that the flooring had to be replaced at a cost of \$966.00. Policy Guideline 40 provides that the useful life of wood flooring is 20 years.

Therefore, as the flooring in the rental unit was 1.5 years old, I reduce the Landlord's award for this claim to **\$893.55**.

With respect to the Landlord's claim for the costs associated with the damage to the bedroom door, I accept the Landlord's undisputed evidence this was caused by the Tenants during the tenancy. The Tenants made no effort to repair or replace this damage during the tenancy which the Landlord undertook at their own expense. Therefore, I grant the Landlord **\$386.40** for this portion of the claim.

As the Landlord has been successful in this matter, I grant the Landlord the **\$100.00** filing fee pursuant to my authority under Section 72(1) of the Act. Therefore, the total amount payable by the Tenant is **\$5,145.41** (\$2,785.00 + \$15.00 + \$25.00 + \$134.90 + \$386.40 + \$370.00 + \$435.56 \$893.55 + \$100.00).

As the Landlord already holds \$1,392.50 in the Tenants' security deposit, I order the Landlord to retain this amount in partial satisfaction of the claim awarded pursuant to Section 72(2) (b) of the Act.

As a result, the Landlord is issued with a Monetary Order for the remaining amount of **\$3,752.91** (\$5,145.41 - \$1,392.50). This order must be served on the Tenant and may then be filed in the Small Claims Division of the Provincial Court and enforced as an order of that court if the Tenant fails to make payment. Copies of this order are attached to the Landlord's copy of this Decision.

Conclusion

The Tenant breached the Act by failing to pay rent and causing damage to the rental unit. Therefore, the Landlord may keep the Tenant's security deposit and is granted a Monetary Order for the remaining balance in the amount of \$3,752.91. This Decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: May 29, 2017

Residential Tenancy Branch