



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND MNDC FF

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- a monetary order for damage to the rental unit pursuant to section 67;
- a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The hearing was conducted by conference call. The tenant did not attend this hearing, although I waited until 2:10 p.m. in order to enable the tenant to connect with this teleconference hearing scheduled for 1:30 p.m. The landlord's agent and witness attended the hearing and were given a full opportunity to provide affirmed testimony and present evidence.

The landlord's son testified that on November 30, 2018, he personally served the tenant R.P.J. with a copy of the Application for Dispute Resolution and Notice of Hearing at the rental property. A copy was also left with R.J. for the other tenant A.J. who is the son of R.J.; however A.J. was not personally served.

Based on the above evidence, I am satisfied that tenant R.J. was personally served with the Application for Dispute Resolution and Notice of Dispute Resolution Hearing pursuant to section 89 of the Act. The hearing proceeded in the absence of the tenants.

Section 89 of the Act requires that for an application for dispute resolution, other than an application for an order of possession, if served personally, must be served to each co-tenant separately. Therefore any monetary order arising out of this application will be issued naming only tenant R.J. as liable.

Issues

Is the landlord entitled to a monetary award for damage or compensation for loss?
Is the landlord entitled to recover the filing fee for this application from the tenant?

Background and Evidence

The tenancy began on August 1, 2015 and ended on November 30, 2018 after the landlord obtained an order of possession pursuant to a One Month Notice to End Tenancy for Cause. The landlord's agent testified that a security deposit was not provided at the start of the tenancy.

The landlord is claiming \$20,215.24. The landlord submitted an invoice from the city by-law department dated November 20, 2018 in the amount of \$19,315.24 charged to the landlord for clean-up of an unsightly property. The landlord also submitted three separate by-law infractions dated July 31, 2018 and August 8, 2018 issued to the landlord for excess vehicles and unsightly property totaling \$900.00.

The landlord's agent testified that the landlord first notified the tenants in writing on July 2, 2018 to clean-up and remove excess vehicles from the property. The landlord also communicated with the tenants by text messages on August 12, 2018 and September 27, 2018 following up the need to clean-up the property and advising that the city had issued infractions. The landlord also submitted a letter dated September 29, 2018 issued to the tenants advising that the city provided an estimation of over \$20,000.00 if the property was not cleaned up immediately. The landlord's agent testified that the tenants did not comply with the landlord's repeated requests to clean the property up resulting in the City issuing the fines to the landlord.

Analysis

Section 7 of the Act provides for an award for compensation for damage or loss as a result of a landlord or tenant not complying with this Act, the regulations or their tenancy agreement. Under this section, the party claiming the damage or loss must do whatever is reasonable to minimize the damage or loss.

Section 32 of the Act requires that a tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access.

I find that the tenants did not maintain reasonable health, cleanliness and sanitary standards throughout the residential property which is supported by the landlord's undisputed testimony and the fines issued by the City by-law department as a result of

the rental unit being unsightly and the storage of excess vehicles. I find that the landlord has established the existence of the loss as claimed and that it occurred due to the actions or neglect of the tenant. I find the landlord provided the tenants with ample notice and opportunity to rectify the issue before the fines were levied by the City.

I find the landlord has suffered a loss as claimed in the amount of \$20,215.24. As the landlord was successful in this application, I find that the landlord is entitled to recover the \$100.00 filing fee paid for this application for a total monetary award of \$20,315.24.

Although, the landlord's agent testified that a security deposit was not provided at the start of the tenancy, in a previous decision dated November 20, 2018, the Arbitrator found that the tenant had paid a security deposit of \$900.00. The landlord was permitted to deduct \$100.00 from this deposit leaving a balance of \$800.00. This previous decision is binding therefore I find the landlord still holds a security deposit of \$800.00. The \$800.00 security deposit is offset from the amount awarded to the landlord for a net monetary award to the landlord in the amount of \$19,515.24.

Conclusion

Pursuant to section 67 of the *Act*, I grant the landlord a Monetary Order in the amount of \$19,515.24. Should the tenant fail to comply with this Order, this 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 21, 2019

Residential Tenancy Branch