



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards
Ministry of Housing and Social Development

Decision

Dispute Codes: MNDC, FF

Introduction

This Dispute Resolution hearing was convened to deal with an Application by the landlord for a monetary order for money owed or compensation for damage or loss under the Act and an order to retain the security deposit in partial satisfaction of the claim. The hearing was also to deal with an application by the tenant for a monetary order for money owed or compensation for damage or loss under the Act.

Both the landlord and tenants were represented and each gave affirmed testimony in turn. A witness for the landlord also appeared

Issue(s) to be Decided for the Landlord's Application

The landlord was seeking to retain the security deposit and receive a monetary order for damage to the unit and for money owed or compensation for damage and loss under a total claim of \$1,913.00

The issues to be determined based on the testimony and the evidence are:

- Whether the landlord is entitled to monetary compensation under section 67 of the *Act* for damages or loss. This determination is dependant upon answers to the following questions:
 - Has the landlord submitted proof that the specific amounts being claimed are validly owed by the tenant to this landlord?

- Has the landlord submitted proof that the claim for damages or loss is supported pursuant to *section 7* and *section 67* of the Act by establishing on a balance of probabilities that the damage was caused by the tenant and the value to repair the damage is justified?

The burden of proof is on the Landlord.

Issue(s) to be Decided for the Tenant's Application

The tenant was seeking a monetary order based on a violation of the tenancy agreement by the landlord in that the landlord had failed to pay the landlord's portion of the hydro. The claim is for \$151.95

The issues to be determined based on the testimony and the evidence are:

- Whether the tenant is entitled to monetary compensation under section 67 of the *Act* for damages or loss. This determination is dependant upon answers to the following question:
 - Was there a violation of the tenancy agreement by the landlord
 - Has the tenant submitted proof that the specific amounts being claimed are validly owed by the tenant to this landlord?

Background and Evidence

The landlord submitted into evidence, proof of service, a copy of the tenancy agreement, a copy of the condition inspection report dated June 30, 2008, a copy of an invoice from a recycle depot for \$21.42 for garbage removal, a copy of an invoice for installation of a new countertop dated September 5, 2008 for \$1,054.50, and two photographs dated July 7, 2008 showing a large burn entirely through the laminate of the countertop and a large pile of garbage bags on the ground outside the door.

The landlord testified that the inspection report confirms that the tenant agreed to numerous deductions from the \$662.50 security deposit including \$75.00 for carpet cleaning, \$60.00 for window cover cleaning, \$20.00 for oven cleaning, \$150.00 for painting, \$20.00 to replace the screen and \$48.00 for lawn mowing, totaling \$378.00 and leaving a balance owed to the tenant of \$284.50.

The landlord testified that the move out inspection was very rushed and full of animosity from the tenants. In fact, one of the tenants even called the police. The landlord testified that because of the situation, the landlord failed to notice that some cleaning products situated on the counter had obscured the fact that the recently installed counter top had been burned through in one spot which effectively destroyed it, forcing replacement at a cost of \$1,054.50 to the landlord. The landlord testified that, unfortunately, the damage was not noted on the inspection report as it was only discovered after the tenants had left. The Landlord is claiming reimbursement for the replacement cost of the counter. In addition, the landlord is claiming costs for garbage removal for bags of garbage left outside of the door.

The tenant refuted the claim of damage to the counter top pointing out that the landlord had ample opportunity to inspect . The tenant denied causing the burn marks. In regards to the claim for garbage removal, the tenant testified that not all of the garbage shown in the photo was from the tenant's unit and in particular, the mirrors were put there by other tenants and had been there for months.

The witness for the landlord, a painter who had been in the unit to paint shortly after the tenants had vacated, testified that he did not notice any burns on the counter top, nor did he recall the landlord complaining about the fact that the tenants had hidden the burned spots during the move-out inspection by placing cleaning supplies on top of them.

In regards to the tenant's application for reimbursement of \$151.95 in utilities owed by the landlord, the tenant presented testimony that this money was owed and the landlord

had not paid. The tenancy agreement submitted into evidence by the landlord does show a provision that required the landlord to pay for half of the hydro during the time that the lower suite was occupied confirming that the provision did exist. However, no copies of hydro bills nor any proof of occupation of the suite during the period in question were submitted.

Analysis

In regards to an Applicant's right to claim damages from the another party, Section 7 of the Act states that 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. Section 67 of the Act grants a dispute Resolution Officer the authority to determine the amount and to order payment under these circumstances.

I find that in order to justify payment of damages under section 67, the Applicant would be required to prove that the other party did not comply with the Act and that this non-compliance resulted in costs or losses to the Applicant, pursuant to section 7.

It is important to note that in a claim for damage or loss under the Act, the party claiming the damage or loss bears the burden of proof and the evidence furnished by the Applicant must satisfy each component of the test below:

Test For Damage and Loss Claims

1. Proof that the damage or loss exists,
2. Proof that this damage or loss happened solely because of the actions or neglect of the Respondent in violation of the Act or agreement
3. Verification of the actual amount required to compensate for the claimed loss or to rectify the damage.

4. Proof that the claimant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage

In this instance, the burden of proof is on the claimant, that being the landlord, to 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 tenant. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. Finally it must be proven that the claimant did everything possible to address the situation and to mitigate the damage or losses that were incurred

Based on the testimony of the parties, I find that the landlord has proven that there was serious damage to a countertop. However, I find that the landlord has not fully met element two of the test for damages, above. Although the landlord had supplied clear photographic evidence that a burn existed and that the claimed costs were incurred, this evidence was not supported by the inspection report nor the witness testimony. This leaves only the verbal testimony of the landlord to explain why the claim should be allowed and that testimony was disputed by the tenant.

It is important to note that the two parties and the testimony each puts forth, are not on equal grounds, because one party must carry the burden of proof. In other words, the Applicant, in this case the Landlord, has the onus of proving, during these proceedings, that ending the tenancy is justified under the Act. In situations, such as this, where the evidence consists only of conflicting verbal testimony, then the party who bears the burden of proof will not succeed.

Given the above, I find that I must dismiss the landlord's claim for compensation of \$1,054.50 for the replacement of the countertop.

Regarding the claim for garbage removal, I note that the landlord supplied photographic evidence and a receipt for disposal in the amount of \$21.42. The tenant verbally disputed that all of the garbage shown is from the tenant's suite and stated that only a

portion was from the tenant's. I find that, because at least some of the garbage was attributable to the tenant, the landlord is entitled to be reimbursed for the disposal costs of \$21.42.

In regards to the tenant's claim of \$151.95 for utilities, I find that the tenant has not satisfied any of the elements in the test for damages above and accordingly the tenant's claim is dismissed.

Conclusion

Based on the testimony and evidence presented during these proceedings, I find that the landlord is entitled to retain \$449.42 from the security deposit and interest of \$674.85, comprised of \$378.00 agreed-upon by the tenants, \$21.42 for garbage removal and the \$50.00 fee paid by the landlord for this application.

I order that the remainder of the security deposit in the amount of \$225.43 must be refunded to the tenant forthwith and I hereby issue a monetary order in favour of the tenant in the amount of \$225.43. This order must be served on the Respondent and may be filed in the Supreme Court, (Small Claims), and enforced as an order of that Court.

Based on the testimony and evidence before me, I find that the tenant's monetary claim is not supported under the Act. I also find that the tenant is not entitled to any reimbursement for the \$50.00 fee paid by the tenant for this application. The tenant's application is hereby dismissed without leave to reapply.

September 22, 2008
