



Dispute Resolution Services

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

Decision

Dispute Codes:

OPR

OPC

OPB

MND

SS

ET

FF

Introduction

This Dispute Resolution hearing was held to deal with an Application by the landlord for an Order of Possession based on unpaid rent and cause, monetary order for rent and for money owed or compensation for damage or loss under the *Residential Tenancy Act*, (the *Act*), an order to serve documents in a different way than that required under the *Act*, an Order to end the tenancy early without notice.

Despite being served by registered mail sent on September 16, 2008, the tenant did not appear.

Issue(s) to be Decided

The landlord was claiming monetary compensation for rent, utilities and damages owed. The application indicated that the landlord was seeking an order of possession, but the

tenant has evidently vacated the unit and therefore these matters are resolved. In regards to the request to serve documents in a way other than that required under the Act, the landlord did not identify the alternate means of service that was being sought.

The remaining 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 money owed, damages or loss. This determination is dependant upon whether or not the landlord has submitted proof that the specific damages being claimed are validly owed by the tenant to this landlord pursuant to *section 7* and *section 67* of the *Act*.

The burden of proof is on the applicant landlord to prove the claim.

Background and Evidence

The landlord submitted into evidence a written statement of claim, receipts and invoices showing the cost of carpeting, a rental account statement, a copy of the tenancy agreement, and a copy of the one-month notice to end tenancy for cause issued on September 3, 2008. No evidence was submitted by the tenant.

The landlord testified that the tenancy began in October 2005 at which time a security deposit of \$300.00 was paid. The landlord testified that the tenant vacated the unit on October 4, 2008 leaving the landlord with costs and damages. According to the application these costs included \$75.00 for carpet cleaning, \$60.00 for utilities, \$600.00 rent loss, \$120.00 for towing of cars, and \$900.00 estimated for storage of vehicles. However, since the unit is now empty the landlord testified that he is claiming the cost of replacing the carpets, the loss of a bookcase valued at \$79.68, \$200.00 cost for cleaning the unit, re-keying costs of \$100.00 and costs for garbage removal.

Analysis

In regards to the landlord's claims for compensation for damage and loss, I note that section 7(a) of the Act permits one party to claim compensation from the other for costs that result from a failure to comply with this Act.

However, 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

In this instance the claims of the landlord were submitted prior to the tenant vacating the unit and as a result some receipts had not been submitted. However the landlord was able to provide a receipt showing that the carpet had been installed in 2005 and that the

replacement cost was \$349.17. The landlord also provided a receipt proving the value of the missing bookcase purchased in 2005 for \$79.68. No receipts were submitted to prove the towing costs, utility costs, re-keying the locks or garbage removal.

I am prepared to accept the landlord's claim for cleaning in the amount of \$100.00, a pro-rated amount for carpet replacement of \$150.00 and reimbursement of \$30.00 for the used bookcase. I also find that the landlord incurred \$600.00 loss of rent for the month of October 2008.

Conclusion

Based on the testimony and evidence presented during these proceedings, I find that the landlord has established a valid claim in the amount of \$930.00, consisting of \$100.00 for cleaning, \$150.00 for carpeting, \$30.00 for the bookcase, \$600.00 loss of rent and the \$50.00 fee paid by the Landlord for this application. I order that the Landlord retain the security deposit and interest of \$309.91 in partial satisfaction of the claim leaving \$620.09 still owed to the landlord. Accordingly, I grant an order in favour of the landlord for \$620.09. This order must be served on the landlord and may be enforced through the small claims court.

October 27, 2008

Date of Decision