Dispute Resolution Services

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

Decision

Dispute Codes:

MNR Monetary Order for unpaid rent or utilities

MND Monetary Order for Damage to the Unit/Site/Property

MNDC Money Owed or Compensation for Damage or Loss

MNSD Keep All or Part of the Security Deposit

FF Recover the Filing Fee for this Application from the Respondent

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 Residential Tenancy Act, (the Act), and an order to retain the security deposit in partial satisfaction of the claim.

The original hearing was held on January 31, 2008 and February 29, 2008 with the decision being rendered on March 3, 2008. An application for review consideration submitted by the tenant on June 13, 2008 was granted and a rehearing was scheduled for August 1, 2008. Part of the application was heard and a determination made on one matter, but the second half of the hearing was adjourned to September 4, 2008 to determine the remainder of the landlord's claim. However, prior to the date, the second half of the hearing was apparently adjourned yet again, at the request of the landlord. The second half of the dispute was then heard on October 23, 2008 in the absence of the tenant. On October 25, 2008 a decision was rendered. On November 5, 2008 the tenant submitted an Application for Review Consideration based on the fact that the tenant was never served with the notice of hearing for the adjourned hearing held on

October 23, 2008. This review request was granted in a review consideration decision issued on December 9, 2008 and it was ordered that the entire claim in the landlord's original application be re-heard. Both the landlord and tenant attended this re-hearing and each gave testimony in turn.

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 rent owed, loss of rent, damage to the unit and for money owed or compensation for damage and loss under the Act for a total claim of $3,388.40

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

- Whether the landlord was owed rent by the tenant
- Whether the landlord is entitled to monetary compensation under section 67 of the *Act* for damages or loss and to retain the security deposit. This determination was dependant upon answers to the following questions:
    - Had the landlord submitted proof that the specific amounts being claimed are validly owed by the tenant to this landlord?
    - Had 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:
        - a) that the damage was caused by the tenant and
        - b) a verification of the actual costs to repair the damage
        - c) that the landlord fulfilled the obligation to do what ever is reasonable to mitigate the costs

The burden of proof regarding the above was on the landlord/claimant.

Background and Evidence

The tenancy began on May 12, 2006 and ended on July 7, 2007. The tenant paid a security deposit of $350.00. Submitted into evidence was proof of service, copies of communications between the parties, photographs of the unit and the property, a copy of the tenancy agreement, a copy of a letter from the tenant dated June 1, 2007, giving written notice to the landlord to end the tenancy as of July 15, 2007, copies of invoices and receipts, an itemized list of repairs and costs completed by the landlord between July 14, 2007 to July 25, 20076 showing the time spent for labour, a copy of a letter dated February 28, 2008 from the former tenant verifying that the unit was left in clean condition and in good repair when the former tenant had left in April 2006.

The landlord testified that the tenant gave more than one month's notice to move but had set the end of the tenancy to occur mid month which was not compliant with the Act. Therefore the landlord was claiming half a month rental arrears for the remaining rent owed for the month of July 2007 in the amount of $350.

The landlord testified that the tenant left without providing a forwarding address and the deposit was not returned. The landlord testified that the tenant had never subsequently supplied a forwarding address. However the landlord effected service of the Hearing Notice and the claim on the tenant in person at her place of employment.

The landlord testified that the tenant left the unit in an unclean condition with animal litter and garbage in the yard, as well as damage to the walls that required patching and repainting. The landlord testified that the amount of work that needed to be done prior to re-renting the unit resulted in a loss of rent for the month of August 2007 in the amount of $700.00, which is also being claimed in this application.

The landlord was also making a monetary claim for compensation for the cleaning and the repairs claiming the following:

- $350.00 for outstanding rent for the latter half of July 2007

- $268.75 cost of garbage removal inside and outside including verified dump fees of $20.75 and a claim for 6 hours of labour at $33.00 per hour and the landlord's rental of the landlord's truck for two hours at $25.00 per hour .
- $820.83 for cleaning unit which represents 24 hours of cleaning between July 14, 2007 and July 25, 2007at $33.00 per hour and supplies purchased for $28.83
- $133.00 estimated cost for replacement cost of glass shelf in refrigerator due to mould damage from rotting food
- $682.80 for painting and repair of 64 picture holes in wall including $122.00 for the cost of paint, and 18.5 hours of labour at $40.00 per hour
- $145.22 for cleaning of stained bedroom carpet including rental cost of $54.22 and two hours of labour at $33.00 per hour
- $33.00 to clean up animal faeces and bones in yard
- $700 representing lost revenue for the month of August 2007 while unit was being cleaned and repaired.

1. $50.00 cost of filing the application

The total amount being claimed against the tenant was $3,183.60.

The tenant testified that the rent claimed as being owed by the tenant was inaccurate as the tenant had been wrongfully overcharged for rent for a period of 13 months during the tenancy due to the imposition of an extra charge of $50.00 for the use of the dog run. I note that the extra $50.00 for the dog run was not mentioned in the tenancy agreement. The landlord's testimony was that this was a separate arrangement based on a verbal agreement similar to charges that may be imposed for parking and that it should not be considered an illegal rent increase. The tenant's position was that no rent was owed to the landlord and that in fact, the landlord owed the tenant $650.00 for the extra rent charged in violation of the Act.

In regards to the landlord's claim for loss of $700.00 rent for the month of August 2007, the tenant testified that this was not warranted. The tenant testified that after the tenant gave notice on June 1, 2007, the landlord then had a full month to start trying to re-rent the unit during the month of June 2007 and two weeks during the month of July 2007. The tenant pointed out that, in fact, the unit was actually vacant on July 7, 2007, thereby affording the landlord one week of free access during which the unit was vacant. The tenant testified that the landlord did not make a reasonable effort to minimize the losses by re-renting in a timely way.

In regards to the landlord's claims for compensation for cleaning and repairs, the tenant disputed the claims and objected to the amounts being claimed by the landlord for the work. The tenant stated that the unit was left in a comparable condition as when the tenant moved in. The tenant pointed out that no move-in or move-out inspection reports were done. The tenant testified that repairs were unnecessary and that the security deposit of $350.00, plus interest, was left for the landlord to utilize for the final cleanup. The tenant's position is that this amount should have sufficed to absolve the tenant of any further obligation.

The tenant disputed the specific claim for the yard cleanup of $268.75 plus $33.00 for dog clean-up, and felt that the number of hours being claimed were excessive, as was the rate of $33.00 per hour. The tenant testified that some of the photos appear to be taken prior to when the tenancy ended in that photos of the yard show the resident and equipment that were removed upon vacating the unit. The tenant stated that the dog droppings were also left by the landlord's dog. The tenant testified that during the tenancy some branches had fallen into the yard during a storm and remained there, which should not be the tenant's responsibility to remove. The tenant testified that the yard was never landscaped.

The tenant did not agree with the landlord's claim for twenty-four hours of cleaning in the unit and supplies at a cost of $820.83. The tenant disputed the landlord's allegation that the unit was left in a severely dirty state. The tenant testified that the tenant did not

recognize some of the photos included into evidence. The tenant also disputed the $133.00 claim for replacement of the refrigerator shelf claimed to have been ruined by mould. However, the tenant admitted that some non-perishable food was left in the refrigerator.

In regards to the $682.80 for painting and repair of picture holes in the wall, the tenant disputed that all 64 holes were caused by the tenant. The tenant testified that the landlord had given permission to hang pictures and fasten things to the wall. The tenant also felt that a few pin holes did not justify patching and a total repainting of the unit entailing $122.00 worth of paint and 18.5 hours of labour at $40.00 per hour

In regards to the $145.22 claimed for cleaning of the bedroom carpet, the tenant testified that the carpet was not cleaned when the tenant moved in and the tenant should not be responsible for a carpet shampoo upon leaving.

Analysis

Rent Owed

The landlord was claiming that the tenant's notice to end tenancy was flawed in that the tenancy could not be validly ended mid-month. According to the Act, section 45 (1), a tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that (a) is not earlier than one month after the date the landlord receives the notice, and (b) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement. I find that the rent for the month of July was due and payable on July 1, 2007. I find that while the tenant did give more than a full month notice, the effective ending date must be the day before the day rent is due in order to comply with the Act. Therefore under the Act the effective date of this notice would be July 31, 2007 and the full rent was properly owed for this period. I find that the landlord is entitled to receive the remaining rent owed for the month of July 2007.

The tenant has claimed that the tenant's rental account contained a credit in the tenant's favour due to the collection of an additional $50.00 each month above the

rental rate of $650.00. Therefore, at the time the tenancy ended, the landlord owed the tenant an accrued amount of $650.00. The landlord had argued that the funds were collected as part of an agreement for the use of extra facilities, namely the dog-run, which would be similar to parking privileges.

I find that before such an extra charge for an additional service or facility could be enforced, it would need to be specifically included in the tenancy agreement at the time the agreement was initially signed.

Moreover, although the Act states that a landlord may charge certain non-refundable fees for services or facilities requested by the tenant, the Act's definition of **"***service or facility*" specifically includes the following: (a) appliances and furnishings;(b) utilities and related services; (c) cleaning and maintenance services; (d) parking spaces and related facilities; (e) cablevision facilities; (f) laundry facilities; (g) storage facilities; (h) elevator; (i) common recreational facilities; (j) intercom systems; (k) garbage facilities and related services; (l) heating facilities or services; (m) housekeeping services.

I also find that section 41 prohibits the imposition of any rent increases except in accordance with the Act. Given the above, I find that the landlord had violated the Act by collecting extra rent and that the tenant's rental account contained a $650.00 credit.

I find that applying this credit to the outstanding rent owed, $350.00 for the month of July 2007, would result in a net credit in favour of the tenant in the amount of $300.00.

Loss of Rent and Damages for Cleaning and Repairs

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 order payment in such 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 mitigate the damage or losses that were incurred.

In regards to the claim for loss of rent for the month of August 2007, I find that the landlord did genuinely incur a loss. However, it is necessary for the landlord to prove that reasonable efforts were made to minimize the loss caused by the tenant. Although the landlord took the position that the unclean and damaged state of the unit delayed any efforts to re-rent, I find that, even if I accept that the unit was not rentable and even if I accepted that this continued for the entire three-week period during July, I find it is still possible that the landlord could potentially have located a future tenant or at least could have initiated serious efforts to do so during the period from June 1, 2007 to July 31, 2007, regardless of the other factors affecting the unit. I find that the landlord did not provide any evidence to verify when rental efforts were started and what they entailed. I

find that submitting copies of any advertisements into evidence would have been helpful to establish the landlord's intention and effort to mitigate the one-month loss.

I find that the landlord had completed the cleaning and repairs during the month of July 2007 and that these tasks were spread over three weeks, with an average of six or seven hours per week dedicated to the job. In this respect, I find that some of the responsibility for the length of time to ready the unit must fall on the landlord.

Given the above, I find that the landlord did not satisfy element 4 of the test for damages above and the claim for loss of $700.00 rent claimed for the month of August must therefore be dismissed.

In regards to the damages claimed for the cleaning and repairs, I note that the tenant has a responsibility under section 32 of the Act contains provisions regarding both the landlord's and the tenant's obligations to maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the residential property to which the tenant has access. The expectation is that a tenant will return the unit in the same condition it was in when the tenancy began. Under the Act, a tenant of a rental unit must repair damage to the rental unit caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant but a tenant is not required to make repairs for reasonable wear and tear.

In this instance, I note that the absence of a move-in and move out condition inspection report hampers the assessment of the damages, particularly as the tenant has disputed certain aspects of the landlord's claim on the basis that when the tenancy started the unit was not in a completely clean condition. The landlord's provision of a solicited statement from the previous tenant does not have carry the same evidentiary weight as the valid before-and-after condition inspection reports signed by both parties would, which I note is also a requirement under the Act.

That being said, it is evident that the unit was left with an unacceptable amount of dirt and refuse and that both the interior and the exterior of the premises required a

thorough cleaning. The tenant acknowledged that food was left in the refrigerator, that some cleaning was required for which the tenant intended that the security deposit would be used. I note that that the tenant offered an excuse for the state that the yard was left in by pointing out that it was not landscaped in the first place. I find that the landlord's evidence and the testimony of both parties have satisfied elements 1 and 2 of the test for damages.

In regards to the extent of the work and the hourly rate, the landlord has provided written evidence. However, I note that the invoices for labour were self-generated by the landlord and independent verification of the amount of time spent was not possible.

I find that the amount of time taken to clean the yard was reasonable, but find that the $33.00 rate charged was excessive. I find that the landlord is entitled to $200.00 including the dump fees. The landlord is not entitled to the $33.00 claimed to remove the dog droppings as both parties owned a dog and it could not be established which animal caused the situation.

I find that 10 to 12 hours is a reasonable amount of time to spend to thoroughly clean a vacant house, including all floors, counters, appliances, windows and fixtures and I set the rate at not more than $15.00 per hour. I find that the landlord is entitled to $212.00 including the cleaning supplies.

I reject the landlord's claim for $145.22 for carpet cleaning as the tenant testified that the rug was not cleaned when the tenancy started and there was insufficient evidence to prove otherwise.

I also dismiss the landlord's claim for a replacement shelf for the refrigerator as this expenditure was not adequately supported by any evidence.

In regards to the charges for painting, I accept the tenant's testimony that it was it unlikely that the tenant caused 64 noticeable holes that required patching and I find that, had there been any pre-existing pinholes or nail holes, the tenant may not have noticed their existence at the start of the tenancy, given that no condition inspection report was

ever completed by both parties. Again, the extent of the damage has been unilaterally determined by the landlord who is claiming labour costs at $40.00 per hour totalling $560.00 and the verification of purchased materials only consists of a Mastercard entry showing $122.80 with insufficient details.

This issue is complicated by the fact that the landlord gave clear permission that the tenant could affix things to the wall and this was evidently interpreted by the tenant to mean that the resulting holes did not have to be filled at the end of the tenancy. I find that there is nothing in the tenancy agreement that speaks to this. However, under the Act, a tenant is responsible to repair damage caused by the tenant to a rental unit. Accordingly, I find that it is appropriate for the tenant to contribute to some of the cost of patching and painting and set this amount at $200.00.

I find that the landlord is entitled to compensation of $662.00 comprised of $200.00 for yard cleanup, $212.00 for cleaning, $200.00 for painting and repairs to the unit and the $50.00 paid by the landlord for this application. Having found that there is a rental account balance in favour of the tenant in the amount of $300.00 due to overpayment of rent during the tenancy, I find that the landlord is entitled to be reimbursed for the outstanding amount of $362.00.

Conclusion

Based on the testimony and evidence presented during these proceedings, I find that the landlord is entitled to monetary compensation of $362.00 I order that the landlord retain the security deposit and interest of $361.74 in satisfaction of the claim.

February, 2009 _____

Date of Decision

Dispute Resolution Officer