



Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing and Social Development



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Decision

Dispute Codes:

MNR

MND

Monetary Order for Damage to the Unit/Site/Property

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 to deal with an Application by the landlord for a monetary order for loss of rent and 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. Both parties attended the hearing and each gave testimony in turn.

Preliminary Issue

The tenant was concerned that in the application for Dispute Resolution the landlord had only named and served two of the four co-tenants who had signed the tenancy agreement. Section 13 of the Residential Tenancy Guidelines provides some guidance in regards to the rights and responsibilities of co-tenants. Co-tenants are two or more tenants who rent the same property under the same tenancy agreement. Co-tenants are jointly responsible for meeting the terms of the tenancy agreement. Co-tenants also have equal rights under the tenancy agreement.

Co-tenants are also jointly and severally liable for any debts or damages relating to the tenancy. This means that the landlord can recover the full amount of rent, utilities or any damages from all or any one of the tenants. The responsibility falls to the tenants to apportion among themselves the amount owing to the landlord.

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

The landlord was seeking to retain the security deposit and receive a monetary order in compensation for money owed or compensation for damage and loss under the Act including loss of rent, cleaning costs, painting and repairs and landscaping for a total claim of \$5,362.50.

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 and to retain the security deposit. This determination is dependant upon answers to the following questions:
 - 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:
 - a) that the damage or loss was caused by the actions of the tenant and in violation of the Act
 - 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 is on the landlord/claimant.

Background and Evidence

The landlord testified that tenancy began as a fixed term on June 1, 2008 to expire on May 31 2009, and a security deposit in the amount of \$1,175.00 was paid. The landlord submitted into evidence, a move-in condition inspection report completed and signed by both parties and a move-out inspection report completed in the tenant's absence. The landlord testified that the tenant had stated that the tenancy would have to end due to financial problems and the landlord began to advertise and show the unit to perspective renters. The tenant managed to pay the rent of \$2,350.00 for March 2009 and finally vacated in early April. The landlord was not able to rent the unit until June 2009 and is claiming \$2,350.00 rent loss for the month of April, 2009 and \$2,350.00 rent loss for the month of May 2009. The landlord testified that an appointment was made with the tenant to complete the move-out inspection but the tenant suddenly cancelled just beforehand. The landlord stated that the unit was left in an unclean condition requiring the landlord to incur costs of \$300.00 for 12 hours of cleaning at \$25.00 per hour, professional carpet cleaning costs of \$425.55, repairing and painting the walls for \$750.00 and \$200.00 for 4 hours at \$50.00 per hour to patch damage to the lawn from the tenant's dog. The landlord testified that the tenant had not cleaned the bathroom areas and left the carpets dirty with dog hair. The landlord acknowledged that, while some of the damage and marks on the walls and trim predated the tenancy, the walls were left in much worse condition by this tenant and required painting and patching. The landlord testified that the carpets had been shampooed just prior to the tenancy and the landscaping was also new. The landlord testified that at the end of the tenancy, the tenant seemed to be avoiding contact and pointed out that, had the tenant cooperated with the move-out inspection and met with the landlord as promised, the tenant would have been given the opportunity to clean the unit and repair the damage. The landlord testified that a great deal of effort had been made to keep the repair and cleaning costs as low as possible and in fact some of the costs exceeded the amounts being claimed.

The tenant acknowledged that the fixed term tenancy was ended prematurely, but stated that they had been given the impression that if they found a way to pay all of the rent owed for the month of March, the landlord would release the tenant from the final two months of the agreement. The tenant testified that they did not refuse to cooperate with the move-out inspection and in fact did not know that the meeting scheduled actually related to this matter. In regards to the landlord's claims for damages and cleaning, the tenant testified that the unit was left in reasonably clean condition. The tenant testified that the cleaning costs claimed by the landlord seemed exorbitant. The tenant testified that the previous tenant that occupied the unit before this tenant had two large dogs and, although the carpet was cleaned by the landlord at the start of their tenancy, it had still retained a bad odour. The tenant testified that the carpet was later cleaned by the tenant a couple of months prior to vacating. The tenant testified that the walls were far from pristine when the tenancy began and stated that the tenant should not be held responsible for all of the restoration and painting costs. The tenant did acknowledge that their dog was permitted on occasion to urinate on the lawn, but the tenant's position was that any damage to the grass, even if proven to be attributable to the dog, would have to be considered as normal wear and tear.

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 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.

The fixed term tenancy signed by the tenant was set to expire on May 31, 2009 and I find that the tenant did not fulfill the obligation to remain and pay the rent to the end of the agreement. In regards to the tenant's assumption that the landlord's acceptance of the plan to vacate constituted a waiver of the tenant's liability under the contract, I find this kind of change to the original signed agreement would need to be in writing. I find that the landlord did advertise and show the unit to prospective renters, but was not successful in re-renting and incurred a verified loss of two months rent in the amount of \$4,700.00, which I find was directly caused by the tenant's violation of the agreement. In this regard the landlord has met the test for damages and is entitled to the claim for lost rent in the amount of \$4,700.00.

Section 32 of the Act states that when a tenant vacates a rental unit, the tenant must leave it reasonably clean and undamaged, except for reasonable wear and tear.

In regards to the obligations of the landlord in scheduling the move-out inspection, section 16 (1) of the Regulation states that the landlord and tenant must attempt in good faith to mutually agree on a date and time for a condition inspection between 8 a.m. and 9 p.m., unless the parties agree on a different time. And section 17 of the Regulation states that a landlord must offer to a tenant a first opportunity to schedule the condition inspection by proposing one or more dates and times. I accept the landlord's testimony that the landlord did attempt to follow this process.

However, the Regulation also provides that, if the tenant is not available at a time first offered then a) the tenant may propose an alternative time to the landlord, who must consider this time prior to acting under paragraph (b), and (b) the landlord must propose a second opportunity, different from the opportunity described in subsection (1), to the tenant by providing the tenant with a notice in the approved form.

I find that when the tenant did not appear for the meeting, the landlord was required to ensure that a clear notification was sent advising the tenant in writing of the second and final opportunity to participate in the inspection. In this instance I find that the landlord did not offer a final opportunity to participate in the move-out inspection on the approved form as required by the Act. Had the landlord complied with this provision, the tenant could not then claim that they were unaware that the landlord was attempting to arrange a move-out inspection.

I note that in regards to the walls, the move in inspection verifies that some damage pre-existed the tenancy and the move out inspection report completed by the landlord in the tenant's absence indicated that significantly more damage was evident. The landlord's testimony was that the amount of the claim for paint and repair had already taken into account the fact that there was some prior damage. I find that there is no way to accurately determine or apportion what the additional margin of damage was directly

caused by the tenant during this tenancy. There were no before and after photos and only verbal descriptions of the extent. I find that I must dismiss the portion of the landlord's application and the claim for \$787.50 relating to the wall and trim repairs.

In regards to the claim for carpet cleaning, I find that both parties agreed that the carpets were professionally cleaned at the start of the tenancy. The fact that, according to the tenant, this cleaning did not completely remove the odour, would not excuse the tenant from reciprocating and cleaning the carpet just before leaving. The tenant's testimony that the carpets were cleaned a couple of months before vacating was not supported by the submission of any evidence. I accept the claim for the carpet cleaning in the amount shown on the invoice for \$425.55 that was submitted into evidence by the landlord.

In regards to the general cleaning costs being claimed, I note that the invoice indicated 12 hours of cleaning at \$25.00 per hour totalling \$300.00. To justify this amount it is clear that the unit would have to have been left in a condition that was far from "reasonably clean". In the absence of photographs with only a move-out inspection report signed by the landlord alone, it is difficult to determine whether or not the level of cleanliness was unreasonable. Given the above, I am prepared to accept the landlord's verbal testimony that part of the residence was not left in a reasonably clean state. I find that the landlord is entitled to 6 hours of cleaning at \$15.00 per hour for a total monetary entitlement of \$94.50 for cleaning costs including the GST.

In applying the test for damages to the claim for \$200.00 plus GST for repairs to the lawn allegedly due to damage from the tenant's dog, I find that the landlord failed to meet the criteria under element 2. There is nothing in the tenancy agreement prohibiting the tenant from permitting the dog to access the yard nor requiring the tenant to ensure that the grass was not exposed to potential risk. I do not find a violation of the agreement by the tenant in the use of the yard. As to whether the fact that damage occurred was in violation of the Act, I note that section 37 (2) of the Act states that, when a tenant vacates a rental unit, the tenant must leave it reasonably clean and undamaged except for reasonable wear and tear and section 32 states that a tenant

must maintain reasonable health, cleanliness and sanitary standards throughout the residential property to which the tenant has access and must repair damage to the that is caused by the actions or neglect of the tenant. That being said, section 32(4) specifically states that a tenant is not required to make repairs for reasonable wear and tear.

Therefore in order to satisfy element 2 of the test, it must be proven that damage occurred directly caused by the dog that was *not* due to normal wear and tear. I find that the landlord's argument that the spots on the lawn were presumed to be obviously caused by the dog, supports the premise that allowing a dog in the yard would normally result in such damage. The tenancy agreement did not restrict this practice. For this reason I find that the damage, if indeed it was automatically assumed to be from the dog, would have to be considered as normal wear and tear as part of the tenancy. Accordingly, I find that this portion of the landlord's application and claim for \$200.00 must be dismissed.

In regards to the service address for the respondent, the tenant has confirmed that the address shown on the application is the address for service.

Conclusion

Based on the testimony and evidence presented during these proceedings, I find that the landlord entitled monetary compensation in the amount of \$5,320.05 comprised of lost rent in the amount of \$4,700.00, carpet cleaning for \$425.55, general cleaning of \$94.50 and the \$100.00 paid to file the application.

I order that the landlord retain this amount from the security deposit and interest of \$1,185.31 leaving a balance of \$4,134.74 owed to the landlord. 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.

May 28, 2009

Date of Decision

Dispute Resolution Officer