



Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing and Social Development

Decision

Dispute Codes:

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

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 claim was for \$3,247.50.00 based on the landlord's expenditures to repair the unit.

The landlord appeared but the neither of the tenants appeared..

Preliminary Issue

The landlord testified that the male tenant was served by at the address shown on the application and that the female tenant was served by registered mail sent to her place of employment.

Section 89 of the Act states that an application for dispute resolution or a decision of the director to proceed with a review, must be given in one of the following ways:

(a) by leaving a copy with the person;

(b) if the person is a landlord, by leaving a copy with an agent of the landlord;

(c) **by sending a copy by registered mail to the address at which the person resides** or, if the person is a landlord, to the address at which the person carries on business as a landlord;

(d) if the person is a tenant, by sending a copy by registered mail to a forwarding address provided by the tenant;

(e) as ordered by the director under section 71 (1) [*director's orders: delivery and service of documents*].

I therefore find that the Notice of Dispute Resolution was not properly served to the female tenant because it was not served at her place of residence. I do find, however, that the notice was properly served on the male tenant at his place of residence by registered mail in compliance with the Act.

Section 13 of the Residential Tenancy Guidelines states that 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 and are both 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 both or any one of the tenants. The responsibility falls to the tenants to apportion among themselves the amount owing to the landlord.

I therefore amend the landlord's application to only include the male co-tenant who I find was properly served with the Notice.

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

The landlord was seeking compensation for damage and loss under the Act for a total claim of \$3,247.50.

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 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:
 - 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 is on the landlord/claimant.

Background and Evidence

The tenancy began in September 2007 and current rental rate was \$1,300.00. The landlord ended the tenancy for unpaid rent in March 2009 and received an monetary order for rent owed and loss of rent at a previous hearing. In the March 31, 2009 decision, the Dispute Resolution Officer found that the rental unit was left in a condition that prevented re-rental pending repairs that were underway. This application from the landlord is to obtain a monetary order against the tenant to compensate the landlord for the repairs. In the amount of \$3,247.50.

Submitted into evidence was a copy of the tenancy agreement, proof of service, photographs of the unit, invoices for \$125.00 for cleaning, \$1,417.50 for carpet replacement, \$500.00 plus \$25.00 G.S.T. for garbage removal and \$1,200.00 plus \$60.00 G.S.T. for wall repairs. The landlord also submitted a copy of the past invoice for the original carpeting which was newly installed in August 2007, just prior to the beginning of the tenancy. The landlord testified that although there was no move-in

inspection report, the unit had been newly renovated just prior to the start of the tenancy.

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

It must first be determined whether there was a violation of the Act by the tenant. I find that section 32 of the Act contains provisions regarding both the landlord's and the tenant's obligations to repair and maintain. A landlord must provide and maintain residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law, and having regard to the age, character and location of the rental unit to make it suitable for occupation by a tenant. A tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the residential property to which the tenant has access. While a tenant of a rental unit must repair damage to the rental unit caused by the actions or neglect of the tenant, this section of the Act specifies that a tenant is not required to make repairs for reasonable wear and tear.

Section 37 (2) of the Act states that when a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear. I find that the flooring and wall finishes were approximately one-and-a-half years old and that the useful life expectancy of carpeting and interior paint finishes is 10 years. I find that the landlord is entitled to compensation of \$125.00 for cleaning. In regards to the carpeting, I find that the landlord is entitled to \$1,417.50 for carpet replacement less \$212.63 for 1.5 years of normal wear and tear totalling \$1,204.87. In regards to garbage removal, I find that the landlord is entitled to \$525.00. In regards to the cost of wall repairs and painting for I find that the landlord is entitled to \$1,260.00 less \$189.00 for normal wear and tear totalling \$1,071.00. I find that the total amount of damages for which compensation must be paid is \$2,925.87

Conclusion

Based on the testimony and evidence presented during these proceedings, I find that the landlord is entitled to monetary compensation in the amount of \$2,975.87 comprised of \$2,925.87 for damages and the \$50.00 fee paid by the landlord for this application. Accordingly, I grant a monetary order in favour of the tenant for \$2,975.87. This order must be served on the landlord and may be filed in Small Claims Court for enforcement if necessary.

July 2009

Date of Decision

Dispute Resolution Officer