



Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing and Social Development

Decision

Dispute Codes:

MNR

MNSD

FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord for a monetary order for loss of rent and an order to retain the security deposit in partial satisfaction of the claim. Both the landlord and the tenant appeared and gave testimony.

Issue(s) to be Decided

The landlord was seeking a monetary order claiming \$500.00, the equivalent of the security and pet-damage deposit paid by the tenant . The issue to be determined based on the testimony and the evidence are:

- Whether the landlord is entitled to monetary compensation of \$500.00 for loss of rent, cleaning costs and damages.

Background and Evidence

The landlord submitted into evidence an unsigned tenancy agreement, a copy of a move-in inspection report, receipts and a written statement. The tenant submitted into evidence a written statement objecting to the cleaning costs and the damages being claimed by the landlord.

The landlord testified that on the tenancy started on April 15, 2009 with rent set at \$750.00. The landlord testified that there were some disputes with the tenant requiring police intervention. The landlord testified that there were also problems in collecting the security and pet damage deposit and the rent. The landlord testified that on May 22, 2009, the landlord issued a Ten-Day Notice to end Tenancy for Unpaid Rent, but the Notice was cancelled by the fact that the tenant paid the arrears within 5 days reinstating the tenancy. The landlord testified that he was shocked on May 31, 2009, when he went to collect the rent only to discover that the tenant had suddenly moved out without giving one month's written notice. The Landlord testified that a loss of rent of \$750.00 was incurred. The landlord testified that the cleaning costs, repairs and re-keying, as well as the loss of an antique coat rack worth \$250.00 all added up to substantially more than the \$500.00 he was claiming.

The tenant acknowledged that he did not give written notice to vacate. However he felt that the landlord should have been expecting him to move out. The tenant testified that the landlord had issued a Notice to End Tenancy and he had told the landlord that he would not be staying. In addition, there were serious problems with the tenancy entailing police involvement, and the tenant's position was that the ending of the tenancy should have been obvious to the landlord. The tenant conceded that the landlord was entitled to retain part of the damage deposit to clean the carpets, but objected to the amount charged for this carpet cleaning. The tenant stated that he expected to be refunded the remaining security deposit of \$350.00. The tenant admitted that he absconded with the landlord's coat rack, which he estimated was worth \$50.00, as security for the return of his deposit. The tenant testified that he did not provide a written forwarding address to the landlord , but had spoken with the landlord by telephone and was told that the deposit would not be refunded.

Analysis

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 will 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

I find that there was a violation of the Act by the tenant in not providing one-month's written Notice. The fact that the parties had not signed a written tenancy agreement does not exempt the tenant from complying with sections 45 and 52 of the Act. Ending a tenancy must be done in strict compliance with the Act and the tenant failed to comply.

In regards to that the landlord's claims for the wall damage, cleaning, screen repairs and re-keying, I find that these claims do not satisfy element 2 of the test for damages and for a number of these claims I find that the proof submitted to verify some of the costs consisted of receipts created by the landlord. In any case, providing proof of the

amount of the costs only meets element 3 of the test. The landlord must prove that the tenant caused the damage in violation of the Act and has not sufficiently done so.

In regards to the loss of rent, I find that this did occur and was due to the tenant's violation of the Act in not giving one-month's written notice. Finally, I find that the landlord is entitled to be compensated for carpet cleaning costs. However, I find that the landlord did not provide adequate verification of these costs and I do not accept the full \$125.00 quoted. There were no professional receipts showing payment for the rental equipment and I find the hand-written invoice signed by the landlord to be insufficient proof. Given the above, I find that the landlord is entitled to be compensated in the amount of \$450.00 for the above losses and damage. I also find that the landlord is entitled to be reimbursed for the loss of the coat rack in the amount of \$100.00.

Based on the above facts, I find that the landlord has established a total monetary claim of \$600.00 comprised of \$450.00 rent loss and carpet cleaning, \$100.00 for the missing coat rack and the \$50.00 fee paid for this application. I order that the landlord retain the security deposit of \$325.00 and pet damage deposit of \$125.00 totalling \$500.00 in partial satisfaction of the claim, leaving a balance of \$100.00.

A monetary order for \$100.00 will be issued against the tenant. However, should the tenant return the coat rack in good condition by October 15, 2009, for which the landlord must issue a written receipt, this would satisfy the monetary order in full in the amount of \$100.00.

Conclusion

Based on the testimony and evidence presented during these proceedings, I grant the landlord a monetary order under section 67 of the *Act* for \$100.00.

I order that the tenant may satisfy this monetary order either by returning the landlord's coat rack on or before October 15, 2009 or, failing that, by being required to pay \$100.00 to the landlord. This order must be served on the Respondent and may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

September 2009

Date of Decision

Dispute Resolution Officer