

Decision

Dispute Codes:

MND MNSD FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord for a Monetary Order for damage to the unit, site or property and cleaning costs, to keep the remainder of the security deposit and to recover filing fee from the tenant for the cost of this application.

The landlord appeared and gave testimony. The registered mail sent to one of the co-tenants was returned and I find that this tenant was not served.

However, the registered mail addressed to the other tenant, RC was confirmed as received in that the tenant signed the Canada Post delivery receipt. Despite being served by registered mail, the tenant did not appear.

All of the testimony and documentary evidence was carefully considered.

Issue(s) to be Decided

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

- Whether the landlord is entitled to a monetary Order under section 67 of the *Residential Tenancy Act* for damages or loss. 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 tenant moved in on September 15, 2008 and a deposit of \$775.00 was paid. No move-in inspection report was completed at that time. The tenant left without notice at the end of May 2009.

The landlord testified that the tenant did not pay \$1,550.00 rent for the month of May, 2009. The landlord testified that, because of the lack of notice and the repairs and cleaning, the landlord was only able to find a new tenant for June 23, 2009 and lost \$1,136.00 rent for the month of June 2009. The landlord is claiming these amounts.

In addition, the landlord stated that, when the tenant left there were numerous condition issues for which costs are being claimed. The landlord was claiming \$300.00 for cleaning and also provided an invoice for \$294.00 for the carpet cleaning as well as a verbal claim for \$400.00 paid for yard cleaning, grass cutting and rubbish removal. The landlord also testified that some rooms required repainting and repairs costing \$250.00 and a receipt for \$83.07 for the purchase of the paint was placed in evidence. The landlord testified that a closet was damaged costing \$120.00 to repair plus materials and submitted receipts for \$180.81 to buy a replacement closet door and shelf. A threshold to the garage was also damaged costing \$40.00 to repair. The landlord was also claiming postage costs and the \$50.00 paid for the dispute application.

The claim for rent is \$2,686.00 and the claim for repairs and cleaning totals \$1,744.34. The landlord supplied photographs illustrating some of the damaged areas.

Analysis: Damage Claim

In regards to the claim of damages to the unit, I note that, in order to support compensation under section 67 of the *Act*, the landlord had the burden of proving the following:

Test for Damage and loss

- (1) Proof that the damage or loss existed
- (2) Proof that this damage or loss happened solely because of the Respondent and in violation of the Act or agreement
- (3) Verification of the actual amount or cost of repairing or rectifying 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 regards to rent owed and unpaid, Section 26 of the Act requires that rent be paid when it is due and I accept the landlord's testimony that \$1,550.00 rent owed for the month of May 2009 was not paid. I find that the landlord is entitled to compensation for this unpaid rent.

In regards to the claim for loss of rent in the amount of \$1,136.66 for the month of June 2009, I find that the landlord has satisfied all elements of the test for damages and loss and is entitled to recoup this amount from the tenant.

In regards to the damages claimed for the condition of the unit, I find that 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 landlord's testimony and evidence does show damage some condition issues and I find that element one of the test for damages has been successfully met.

In regards to meeting element two of the test for damages, the landlord's position was that this damage was clearly committed by the tenant during the course of this tenancy.

I find that this can only be established with clear verification of the condition of the unit at the time the tenancy began as compared to the condition of the unit after the tenancy had ended. I find that the landlord did not submit a move-in inspection-report which made it difficult to determine whether damage was committed by the tenant and also the extent of the damage and this obviously impedes the accurate determination of the "before and after" assessment of the unit.

While it is difficult for this landlord to satisfy element 2 of the test for damages, I accept the landlord's testimony that the unit was in need of painting and repairs. I find that the useful life of interior paint is 4 years and the landlord is entitled to 50% of the costs including \$41.54 for the materials and \$125.00 for the preparation and repair work.

In regards to the cleaning, I accept the landlord's testimony that the unit was not fully cleaned by the tenant. However, I find that the \$300.00 charged for labour was not adequately supported by detailed evidence and set the amount of compensation at \$100.00. I find that the cost of the carpet cleaning in the amount of \$294.00 is verified and that the landlord should also be compensated for this expenditure.

However, in regards to the yard work, trash removal and grass cutting, I find that both the damages and the \$400.00 charges were not sufficiently proven by the landlord. There was no written tenancy agreement outlining the tenant's responsibilities in regards to the yard and no verification that garbage was removed, nor was there an invoice from the person doing this labour. I therefore find that the claim does not satisfy the test for damages and this portion of the landlord's application must be dismissed.

In regards to the repairs to the closet door, I find that the tenant caused this damage. The value is normally pro-rated according to the vintage of the item in question. The age of this particular door is not known. The life expectancy of a door is 20 years and it is likely that through wear and tear, a bi-fold door may not last as long as a regular door. That being said, I find that the landlord should be compensated for having to replace the door and I grant the cost of materials in the amount of \$172.46 for the door and \$8.35

for the shelf and rod. I also find that the landlord is entitled to \$40.00 to repair the threshold to the garage.

In regards to the compensation claimed for postage costs, I find that the landlord is not entitled to these costs under the Act. However, I find that the landlord is entitled to be compensated for the \$50.00 cost of the application.

I find that the landlord has established a total monetary claim of \$3,518.00 comprised of \$1,550.00 rental arrears for May 2009, \$1,136.66 loss of rent for June 2009, \$41.54 for purchase of paint, \$125.00 for the painting and repair work, \$100.00 for general cleaning, \$294.00 for carpet-cleaning, \$180.81 for the closet materials, \$40.00 for repairing the threshold and the \$50.00 fee paid by the landlord for this application. I order that the landlord retain the security deposit of \$775.00 in partial satisfaction of the claim leaving a balance due of \$2,743.01.

Conclusion

I hereby grant the Landlord a monetary order under section 67 for \$2,743.01. 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.

November 2009
Date of Decision

Dispute Resolution Officer