

DECISION

Dispute Codes MND MNSD

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord to obtain a Monetary Order for damage to the unit and to keep all of the security deposit in partial satisfaction of their claim.

Service of the hearing documents, by the Landlord to the Tenant, was done in accordance with section 89 of the *Act*, sent via registered mail on September 2, 2009. The Tenant confirmed receipt of the hearing package and is deemed to be served the hearing documents on September 7, 2009, the fifth day after they were mailed as per section 90(a) of the *Act*.

Both the Landlord and Tenant appeared, acknowledged receipt of evidence submitted by the other, gave affirmed testimony, were provided the opportunity to present their evidence orally, in writing, in documentary form, and to cross exam each other.

All of the testimony and documentary evidence was carefully considered.

Issues(s) to be Decided

Is the Landlord entitled to a Monetary Order under sections 38 and 67 of the *Residential Tenancy Act*?

Background and Evidence

The undisputed facts are that the fixed term tenancy began on August 18, 2008, was set to expire on August 31, 2009 and the Tenant vacated the rental unit on September 1, 2009, by mutual agreement. The monthly rent was payable on the first of each month in the amount of \$1,900.00 and the Tenant paid a security deposit in the amount of \$950.00 on August 18, 2008. Both parties signed a written tenancy agreement and move-in inspection report on August 18, 2008 however the Tenant failed to attend the final move-out inspection on September 1, 2009 and did not sign the move-out inspection form.

The Landlord testified that the Tenant failed to maintain the lawn and yard, as required under sections 2.3 and 2.4 of her tenancy agreement, and the municipality issued a letter to the property owner advising that if the property was not cleaned up within ten days then the municipality would conduct the work and charge the Landlord. The Landlord argued that she gave the Tenant the opportunity to comply with the municipalities order however the Tenant declined stating that she did not know anyone who could assist her and she did not have the funds to hire someone to perform the work. The Landlord argued that it cost her \$190.00 to have the work completed and referred to the receipt she included in her evidence.

The Tenant testified and confirmed that she did not maintain the yard, as required by her tenancy agreement, and that she did tell the Landlord she did not have anyone to assist her with the clean up nor did she have the funds to hire someone to complete the work. The Tenant stated "I should have done the yard work on a regular basis, but I didn't and I can't make excuses for it".

The Landlord testified that she is also seeking a monetary order of \$632.42 for damages to the bi-fold doors, dishwasher, toilet roll holder, broken windows, and for costs to clean up and remove debris left by the Tenant. The Landlord argued that she spoke with the Tenant on August 6, 2009 to give the Tenant the opportunity to conduct the required repairs before the end of the tenancy and the Tenant told the Landlord that she could not have the repairs completed as requested. The Landlord stated that she made arrangements with the Tenant to bring a handyman to the rental unit on August 17, 2009 and that when they arrived the Tenant and her male friend were present and they conducted a walk through together, making a list of the required repairs, and divided up what jobs the Tenant's friend would assist with.

The Tenant confirmed that she and her male friend attended the meeting on August 17, 2009, that a list was created of required repairs, and that the repairs the Tenant's friend could not complete were left for the Landlord to take care of.

Analysis

I find that in order to justify payment of damages under sections 67 of the *Act*, the Applicant Landlord 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, in this case the Landlord, bears the burden of proof and the evidence furnished by the Applicant landlord 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 loss or to rectify the damage
4. Proof that the claimant followed section 7(2) of the *Act* by doing whatever is reasonable to minimize the damage or loss

In regards to the Landlord's right to claim damages from the tenant, Section 7 of the *Act* states that if the landlord or tenant does not comply with this *Act*, 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 to order payment under these circumstances.

Based on the evidence and testimony before me I find that damage was caused to the rental unit during the Tenant's tenancy. The Tenant failed to maintain or repair the rental unit in contravention of section 32 of the *Act* which provides that a Tenant must repair damage caused by the neglect of the tenant or a person permitted on the property by the tenant. Based on the aforementioned I find that the Landlord has proven the test for damage or loss as listed above and I hereby approve the Landlord's claim of \$822.42.

Monetary Order – I find that the Landlord is entitled to a monetary claim and that this claim meets the criteria under section 72(2)(b) of the *Act* to be offset against the Tenant's security deposit as follows:

Lawn cleanup and care	\$190.00
Repairs to inside the rental unit	<u>632.42</u>
Subtotal (Monetary Order in favor of the Landlord)	\$822.42
Less Security Deposit of \$950.00 plus interest of \$5.30	-955.30
TOTAL OFF-SET AMOUNT DUE TO THE TENANT	\$132.88

The Landlord is hereby ordered to refund the balance of the Tenant's security deposit in the amount of \$132.88.

Conclusion

A copy of the Tenant's decision will be accompanied by a Monetary Order for \$132.88. The order must be served on the Landlord and is enforceable through the Provincial Court as an order of that Court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: November 17, 2009.

Dispute Resolution Officer