



Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing and Social Development

Decision

Dispute Codes:

MND, MNDC, FF

Introduction

This Dispute Resolution hearing was convened to deal with an Application by the landlord for a monetary order for compensation for damage or loss under the Residential Tenancy Act, (the Act).

The landlord appeared but neither of the tenants were present. The landlord testified that the tenants were served by registered mail sent on September 17, 2009 at the address shown on the application and provided the tracking number as verification.

Preliminary Issue

The parties had attended a previous hearing held on November 12, 2008 and the landlord's claims for damages against the tenant were determined. However, in regards to a broken window, it was found that the parties had already reached their own agreement with the tenant admitting to the damage and promising to pay for the window. Therefore, this matter was not previously heard as a dispute issue determined on November 12, 2008, and no previous determination was made on the merits of the claim. Therefore, the matter of damages to the window and the claim for its repair against the tenant may now be heard.

Issue(s) to be Decided

The landlord was seeking compensation for damage and loss under the Act for a total claim of \$789.30 to pay for a window broken by the tenant during the tenancy.

The issues to be determined based on the testimony and the evidence is whether the landlord is entitled to monetary compensation under section 67 of the *Act* for damages or loss and the burden of proof regarding the above is on the landlord/claimant.

Background and Evidence

The tenancy began on March 1, 2008 and ended in September 2008. The landlord testified that when the tenant vacated, a window was left broken, which the tenant had already agreed to repair. However, according to the landlord, the tenant reneged on the agreement and failed to pay for the broken window. The landlord referred to written communications between the parties, copies of which were submitted into evidence. These confirmed the tenant's agreement to pay for the damage. The landlord also submitted a copy of an invoice for the window repair showing that the cost was \$798.30.

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 it 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 landlord, to prove the existence of damage/loss and that it stemmed directly from a violation of the Act or agreement 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.

I find that section 32 of the Act contains provisions regarding both the landlord's and the tenant's obligations. 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 actions or neglect of the tenant, 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.

In this instance I find that the damaged inflicted by the tenant goes beyond wear and tear and that the tenant violated the Act by failing to restore the window which had been broken by the tenant. I find that the landlord's evidence and testimony fully satisfies all elements of the test for damages and therefore the landlord is entitled to be compensated \$789.30 for the window repair.

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 \$839.30 comprised of \$789.30 for the window and the \$50.00 fee paid by the landlord for this application. and I grant a monetary order in favour of the landlord for \$839.30. This order must be served on the landlord and may be filed in Small Claims Court for enforcement if necessary.

February 2010

Date of Decision

Dispute Resolution Officer