

## **Decision**

### **Dispute Codes:**

MNR, MND, MNSD, FF

### **Introduction**

This Dispute Resolution hearing was to deal with an Application by the landlord for a monetary order for rental arrears and 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.

Both parties appeared and gave testimony.

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

The landlord was seeking to retain the security deposit and receive a monetary order in compensation for rent owed and compensation for damage and loss under the Act including cleaning costs and repairs for a total claim of \$1,431.00.

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 entitled to retain the security deposit.

The burden of proof regarding the above is on the landlord/claimant.

### **Background and Evidence**

The landlord testified that tenancy began August 31, 2009, and a security deposit in the amount of \$350.00 was paid. The landlord testified that the tenant was served a Notice to end Tenancy for Unpaid Rent and vacated the unit without paying rent for the month of September in the amount of \$800.00. The landlord testified that the unit was left in a dirty condition with some repairs required.

The landlord testified that the carpet had to be shampooed at a cost of \$60.38 for the rental and \$70.00 for 3.5 hours of labour. The landlord testified that extensive cleaning was required inside and outside entailing 18 hours at a value of \$360.00. The landlord was also claiming the cost of 31.41 for cleaning supplies, \$7.00 for the dumping fees and 42.55 to repair the screen door. The landlord submitted photos into evidence in support of the claim.

The tenant acknowledged that the screen door had broken and admitted to leaving some garbage but stated that not all of the items were from the tenants. The tenant felt that the unit was left in a reasonably clean condition and would not have required 18 hours of cleaning. In particular the tenant objected to the allegation that clean-up of the lawn was necessary because of the tenant's dog and pointed out that the landlord's dog often jumped the fence into the tenant's area. The tenant also testified that the carpet was left in the same condition as when the tenancy began.

### **Analysis**

Section 26 of the Act states that rent must be paid when it is due, under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement. I find that the tenant did not pay the rent when rent was due and that the landlord is entitled to \$800.00 rent for September 2009.

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,
- [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.

Section 37 (2) of the Act states that, when a tenant vacates a rental unit, the tenant must leave it reasonably clean and undamaged except for reasonable wear and tear. At the very least the expectation is that the unit be left in relatively the same condition it was in when the tenant took possession.

In this instance, I find that the landlord met the burden of proof in establishing that some basic cleaning and garbage removal was required and therefore I find that the tenant had contravened section 37(2) of the Act. I find that the landlord succeeded in satisfying elements 1 and 2 in the test for damages. In regards to meeting element 3 of the test, relating to the landlord's verification of the monetary losses, I find that the claim of \$360.00 for the cleaning of the unit was not fully justified and I grant the landlord \$100.00 for clean-up. In regards to the carpet cleaning, I find that the landlord is entitled to be compensated \$60.38 for the rental of the cleaner. I also find that the

landlord is entitled to the \$7.00 dump fees, \$31.41 for cleaning supplies and \$42.55 for the repair of the screen door.

I find that the total amount of monetary entitlement for the landlord is \$1,059.93 comprised of \$800.00 for rent owed, \$100.00 for cleaning, \$60.38 for the rental cleaner, 31.41 for supplies, \$7.00 dumping fees and the \$50.00cost of this application.

### **Conclusion**

Based on the testimony and evidence presented during these proceedings, I find that the landlord entitled monetary compensation in the amount of \$1,059.93. I order that the landlord retain the \$350.00 security deposit in partial satisfaction of the claim leaving a balance still outstanding of \$709.93. This order must be served on the respondent and if unpaid may be filed in the Supreme Court, (Small Claims), and enforced as an order of that Court.

February, 2010

Date of Decision

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Dispute Resolution Officer