



Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing and Social Development

Decision

Dispute Codes:

MND, MNSD, O, FF

Introduction

This Dispute Resolution hearing was convened to deal with an Application by the landlord for a monetary order for money owed or compensation for damages under the Residential Tenancy Act, (the Act), and an order to retain the security deposit. Both the landlord and tenant attended and each gave testimony in turn.

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

The landlord was seeking to retain the security deposit and receive a monetary order for damage to the unit for a total claim of \$2,183.96.

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

- Whether the landlord is entitled to monetary compensation under section 67 of the *Act* for damages or loss and to retain the security deposit. This determination is dependant upon answers to the following questions:
 - 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 take reasonable steps to mitigate the costs

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

Background and Evidence

The tenancy began as a fixed term on October 5, 2008 and rent was set at \$1,200.00 per month with security deposit of \$600.00. The tenant vacated the unit on November 4, 2009. The landlord testified that the tenant left the unit in a condition that was not the same as it was at the start of the tenancy and that the landlord incurred costs to repair and restore the unit.

Submitted into evidence by the landlord were: proof of service, photographs and a video of the unit, an itemized list of the damage, copies of communications between the parties, invoices and estimates, a copy of the tenancy agreement, a copy of the move-in and move-out inspection report. Both parties submitted written testimony and witness statements.

The landlord testified that the tenant left and two attempts were made to do the move-out inspection but they were not able to agree on the damages. The landlord stated that the tenant left 290 holes in the walls, did inadequate patching of some of the walls and used touch-up paint that did not match the wall, thereby necessitating repainting of some entire rooms. The landlord referred to the photographic evidence which showed the holes, each of which was marked on the wall with a numbered label. The landlord testified that she obtained several quotes to try to find the best price. The landlord is claiming \$1,555.00 for the work. The landlord submitted an estimate dated November 14, 2009 outlining the tasks and copies of cheques from the landlord made out to the contractor to support the claim.

The landlord testified that the tenant failed to properly clean the unit and the landlord had to hire 2 cleaners for 4 hours at a cost of \$26.00 per person per hour for which the landlord is claiming \$150.00, after the discount.

The landlord testified that it took 17 days to do the repairs and is claiming a loss of rent for this duration in the amount of \$658.00.

The landlord stated that the tenant should repay the cost of advertising in which was done in anticipation of re-renting the unit . The landlord testified that re-rental was not possible as the condition of the unit was not fit for showing and is claiming \$60.35.

The Landlord was also claiming the \$5.58 cost of material to fix nail holes in the floors and \$31.35 to replace a lock and \$42.39 for the utilities.

The tenant acknowledged that she had mistakenly used the wrong paint shade to touch up certain areas but disputed the bulk of the claim for painting on the basis that most of the holes were fixed and that the landlord should not charge the tenant for any costs beyond the necessary touch-up painting. The tenant's position was that the landlord did not have to repaint entire rooms nor areas that the tenant had not damaged. The tenant also took issue with the fact that the landlord did not submit the final invoice for the costs and had only submitted the estimate from the company. The tenant agreed to \$40.00 for patching the holes, \$80.00 to repair the door frame, \$15.00 for half a can of paint \$40.00 for labour of spot painting and \$20.00 to fix and paint the closet.

The tenant disputed the claim for 8 hours of cleaning but acknowledged that the unit required an extra hour or two of cleaning, which would have been done by the tenant had the inspection process not broken down into an argument that involved yelling and accusations from the landlord and her sister.

In regards to the claim of \$31.35 to replace the lock, the tenant testified that she returned the keys and there was no need for the landlord to immediately change the lock and charge the tenant for this.

The tenant did not dispute the \$5.58 cost of materials to fix the floor nor the \$42.39 claim for utilities.

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,
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 can 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.

Section 32 of the Act contains provisions regarding both the landlord's and the tenant's obligations to repair and maintain. 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 the actions or neglect of the tenant or a person permitted on the residential property by 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 regards to the landlord's claim for the cost of painting, I find that the tenant's objection to the lack of a final invoice and to the fact that the repainting of larger areas than necessary appears to have merit. I find that an estimate will not suffice as proof to support the claim and that the copies of cheques totaling a different amount than that shown on the invoice and lacking a bank stamp to show they have been processed are also not sufficient to prove the claim for \$1555.00. Therefore I find that the landlord has not adequately satisfied element 3 of the test for damages. Therefore I find that the landlord is entitled to \$40.00 for patching the holes, \$80.00 to repair the door frame, \$15.00 for half a can of paint, \$40.00 for the labour for spot painting and \$20.00 to fix and paint the closet.

In regards to the cleaning costs claimed in the amount of \$150.00, I find that the tenant acknowledged that she had left some cleaning to be done and I accept the tenant's testimony that this cleaning would have been done, had the argument between the parties not escalated to the point where the tenant was ordered off the premises. I also find that the landlord did not actually complete the cleaning of the unit until January 2010, which was two months after the tenancy had ended. I estimate the amount to which the landlord is entitled for cleaning costs to be \$40.00.

In regards to the loss of rent being claimed by the landlord, I find that under section 7 of the Act, the landlord was required to take reasonable steps to re-rent the unit without

delay in order to mitigate the losses. The landlord had testified that she advertised to re-rent the suite prior to the tenant leaving but abandoned these efforts because of the repair work to be done first. However I find that thereafter the landlord failed to take prompt action to get the suite ready with the goal of re-renting it as quickly as possible to reasonably mitigate the losses, but instead left the suite vacant for quite some time by choice. Therefore, I find that the landlord's claim for loss of rental in the amount of \$658.00 must be dismissed. I also dismiss the \$60.35 costs for the advertising to re-rent the unit being claimed by the landlord as it is not clear whether or not the landlord was forced to waste these ads because of the condition of the unit or because there was a change of plans for other reasons. I find that a rental unit can still be shown with repairs or repainting pending. In any case, the landlord would usually have to bear the costs of advertising for new tenants as this is considered to be a normal cost of doing business.

In regards to the expenditure claimed to change the locks, I find that section 25 (1) of the Act places the responsibility on a landlord to rekey and pay all costs of changing locks at the request of any new tenant. I find it likely that the landlord would have incurred these costs regardless of whether the tenant had immediately returned the keys. Therefore I find that the claim for \$31.35 to replace the lock must be dismissed.

I find that the landlord is entitled to be reimbursed for the \$5.58 cost of material to fix nail holes in the floors and \$42.39 for the utilities.

I find that the landlord is entitled to monetary compensation in the amount of \$332.97 comprised of \$40.00 for patching the holes, \$80.00 to repair the door frame, \$15.00 for paint, \$40.00 for the painting labour, \$20.00 for the closet, \$40.00 for cleaning, \$5.58 cost of material to fix nail holes in the floors, \$42.39 for the utilities and the \$50.00 cost of filing the application.

I order that the landlord may retain \$332.97 from the \$600.00 security deposit being held on behalf of the tenant leaving the remainder of \$267.03 to the tenant after deducting the compensation owed to the landlord.

Conclusion

I hereby grant a monetary order in favour of the tenant for \$267.03. This order must be served on the Respondent and may be filed in the Supreme Court, (Small Claims), and enforced as an order of that Court.

March 2010

Date of Decision

Dispute Resolution Officer