

Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing and Social Development

Decision

Dispute Codes:

MNSD, MNDC, FF

Introduction

This Dispute Resolution hearing was convened to deal with an application by the landlord for a monetary order for cleaning, damage and loss of rent and to keep the security deposit. The landlord was also seeking to be compensated for the cost of the application.

Both the landlord and tenant appeared and each gave affirmed testimony in turn.

Issue(s) to be Decided

The amount of the claim shown on the application was \$2,675.90.

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 cleaning, damage and loss of rent.

Preliminary Matters

Prior Decision

In addition to the claim for damages, the landlord's application also included a request that the landlord retain the security deposit to offset any monies owed for damages.

However, a previous hearing on the tenant's application for the return of the security deposit was held on October 27, 2009 and a monetary order was issued in favour of the tenant. *Section 77* of the *Act* states that, except as otherwise provided in the *Act*, a decision or an order is final and binding on the parties. Therefore any findings made or orders rendered at the previous hearing are not matters that I have authority to alter and any decision that I issue must honour the existing findings. Therefore, the portion of the

landlord's application relating to the request for an order to retain the security deposit must be dismissed as this matter was already been determined in the previous hearing.

Late Evidence

The landlord had submitted late evidence that was received on file and served to the respondent the day before the hearing. However, pursuant to the Residential Tenancy Rules of Procedure, Rule 3.4 requires that, to the extent possible, the applicant must file copies of all available documents, or other evidence at the same time as the application is filed or if that is not possible, at least (5) days before the dispute resolution proceeding.

In this instance I found that the evidence would not be considered as it was received too late. Accordingly, this late evidence was not taken into consideration in the determination of this dispute. Verbal testimony on the subject was permitted.

Background and Evidence

The tenancy began in September 2004 and the current rent was \$1,400.00. No copies of a written tenancy agreement nor copies of a signed move out inspection report were in evidence. The parties gave verbal testimony as to the terms of the agreement.

The landlord testified that when the tenant vacated in July 2009, the lawn needed to be cut, the carpets needed to be shampooed, there was damage to a window and mirror and the house needed to be cleaned. The landlord testified that it was seeking a monetary order for \$2,675.90 including \$52.50 for the cost of cutting the lawn, \$525.00 for carpet cleaning, \$483.40 to replace a broken mirror and window, \$385.00 for cleaning, \$750.00 for half a month of lost rent, \$480.00 to reinstall the toilet and the cost of filing the application.

The landlord testified that attempts were made to conduct the move-out inspection and the landlord was awaiting the tenant to confirm when everything was ready to do the walk-through. However, the tenant failed to contact the landlord.

The tenant testified that on July 1, 2009, the tenant was prepared for the landlord to participate in the move-out condition inspection, but the landlord was not available. The tenant testified that the landlord never arranged for an alternate date for the move-out inspection to occur.

In regards to the claim for one-half a month's rent, the tenant testified that any delay in renting the unit was a matter between the landlord and the new tenants and it was not her responsibility to reimburse the landlord for the value.

In regards to the lawn, the tenant did acknowledge that the grass had not been cut as the tenant's lawnmower had broken down. The tenant testified that the lawn was not in such a seriously overgrown state to warrant the charge of \$52.20.

The tenant testified that she was willing to clean the carpets on her own and this was discussed with the landlord. However, the landlord had agreed to make arrangements for the carpet cleaning. The tenant objected to being misled about the costs and did not agree with the amount for professional carpet cleaning being allocated back to the tenant.

In regards to the damage to the broken mirror, the tenant stated that she had agreed to pay for the repairs, but pointed out that the glass had broken because the door continually fell off the track. The tenant stated that she awaited the estimates from the landlord for the costs which were expected shortly after the tenant moved out. Because the landlord delayed giving the amounts and repairs were not completed until September 2009, the tenant does not feel that she should now be approached to pay, given the inordinate delay. The tenant acknowledged responsibility for the broken window repair, but pointed out that the landlord apparently did not obtain more than one estimate to find the best prices. In regards to the cleaning claims, the tenant testified that the rental unit was left in a reasonably clean state and did not agree with the cleaning costs. The tenant denied any liability for the defective toilet and associated damage.

Analysis

Loss of Rent

A tenant is required under section 45 the Act to give proper notice to terminate a tenancy. In regards to the landlord's claim for the loss of rent, which the landlord attributed to the delay caused by the tenant in vacating the suite and the work that needed to be done prior to re-renting. I accept the tenant's testimony that she was willing to cooperate in showing the unit and had vacated the suite according to schedule, whether or not the keys were physically turned over to the landlord. I find that whether due to miscommunication or the landlord's unavailability on July 1, 2009, the

vacancy date of July 4, 2009 was arbitrarily set by the landlord. I do not find that the alleged condition of the unit prevented prompt re-rental. In fact it appears that some of the work was not finished until after the new tenants had already moved in. Accordingly I find that the portion of the landlord's application claiming \$750.00 for one-half a month's rent must be dismissed.

Other Monetary Claims

Section 7(a) of the Act permits one party to claim compensation from the other for costs that result from a failure to comply with this Act, the regulations or their tenancy agreement and section 67 of the Act grants a dispute Resolution Officer the authority to determine the amount and to order payment under these 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.

However, 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 respondent. 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

took reasonable steps to address the situation and to mitigate the damage or losses that were incurred.

I note that there would be a violation of the Act under section 37 (2)(a) should the tenant fail to leave the rental unit *reasonably clean*, and undamaged *except for reasonable wear and tear* upon vacating it and the tenant would be liable for any costs or losses incurred by the landlord that flow from the tenant's failure to comply with the Act.

In this instance I find that the landlord provided proof that substantial payment was made for some additional cleaning. However this evidence only satisfies one element in the test for damages. While it is possible that the level of cleanliness did not meet the standards of the new tenants, I accept the tenant's testimony that the unit was left in a "reasonably" clean state, albeit this term is prone to subjectivity. I note that the absence of a signed move-out inspection report significantly impedes the claim. I find that the portion of the landlord's application relating to the \$175.00 and \$210.00 for cleaning must be dismissed.

In regards to the claim of \$52.50 for the lawn cutting, I find that the tenancy agreement did require the tenant to do basic care and I find that the tenant did not comply with this term and failed to complete the lawn cutting prior to leaving. Accordingly, I find that the landlord was entitled to be compensated in the amount of \$52.50.

In regards to the cost of the window replacement, I find that the tenant left this unrepaired damage and would be responsible for the repair costs. I note that the invoice for the window repair also included the cost of replacing the broken mirror as well. In regards to the mirror claim, I accept that the door likely disengaged from the rollers and that this malfunction may have contributed to the damage. I find that, given the age of the mirrored doors, there is a possibility of some wear and tear issues being present as the average useful life of track doors is estimated at between 10 and 15 years. I do not accept the tenant's argument that the inordinate delay by the landlord in requesting payment eliminates any of the liability of the tenant. Accordingly I find that the tenant's portion of the \$483.40 would be \$350.00 and the landlord is entitled to be reimbursed in that amount.

In regards to the carpet cleaning issue, I accept that the parties discussed the carpet cleaning on June 20, 2009, at which point the tenant would have had another 10 days to do the job. I find that, at that time, the landlord did take responsibility to have the

carpets cleaned without making it clear that there was a cost to the tenant. However, I find that the tenant's assumption that all costs would be completely absorbed by the landlord was not reasonable. I note that the invoice showed that basic carpet cleaning for \$250.00 was completed as well as extra services costing \$250.00 for sanitizing and spot removal. Therefore I find that the parties should share in the costs of the carpet cleaning and that the landlord is therefore entitled to be reimbursed by the tenant in the amount of \$252.00.

In regards to the toilet repair, I find that the Act places responsibility for plumbing fixture maintenance squarely on the landlord. I find that the landlord's allegation that the tenant knew about the problem and neglected to report it, thereby causing the long-term water damage, to be without merit. I find that the portion of the landlord's application claiming \$480.00 for repairs and toilet replacement must be dismissed.

I find that the landlord is entitled to monetary compensation in the amount of \$679.50 comprised of \$52.50 for the yard work, \$350.00 for the cost of the glass and mirror replacements, \$252.00 for the carpet cleaning and \$25.00 for a portion of the fee paid for the application.

Conclusion

Based on the testimony and evidence presented during these proceedings, I hereby issue a monetary order in the amount of \$679.50 in favour of the landlord. . The remainder of the landlord's application is dismissed without leave.

April 2, 2010

Date of Decision

Dispute Resolution Officer