



Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing and Social Development

Decision

Dispute Codes:

MNR

FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord for a monetary order for four month's rent owed totalling \$10,000.00 and cleaning costs of \$1,249.00.

Although served with the Application for Dispute Resolution and Notice of Hearing by registered mail, sent on December 17, 2009, the tenant did not appear.

Issue(s) to be Decided

The issue to be determined, based on the testimony and evidence, is whether or not the landlord is entitled to monetary compensation for rental arrears and late fees owed and damages for cleaning.

Background and Evidence

The landlord testified that the tenancy began on June 19, 2008, at which time the tenant paid a security deposit of \$1,250.00. The landlord testified that the current rent was \$2,500.00 per month. The landlord testified that the tenant moved out in November 2009.

The landlord testified that the tenant did not participate in the move-out inspection and had submitted into evidence a copy of a tenancy agreement, and a copy of the Move-In/Move-Out Condition Inspection Report. However the move-out portion was not signed by either the tenant or the landlord and was not dated.

Also submitted into evidence were copies of invoices for tasks completed on October 26, October 27, November 5, November 7,

In addition the landlord had submitted a copy of rent not paid, copies of emails and a copy of a returned cheque. This evidence was submitted to the file on May 7, 2010. However, the landlord did not submit verification that this evidence was ever served on the tenant.

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 accept the landlord's testimony that the tenant did not pay the rent when rent was due and accrued four month's arrears in the amount of \$10,000.00.

In regards to an Applicant's right to claim damages from another party, Section 7 of the Act states that if a landlord or tenant does not comply with the Act, the regulations or the 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 to order payment under these circumstances.

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 to verify the actual monetary amount of the loss or damage. Finally it must be proven that the claimant made a reasonable attempt to mitigate the damage or losses that were incurred.

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 determining whether or not the tenant was in compliance with the Act in this regard, I find that a valid move-out condition inspection report signed by the tenant is important.

Section 35 of the Act requires that the landlord and tenant together must inspect the condition of the rental unit (a) on or after the day the tenant ceases to occupy the rental unit, or (b) on another mutually agreed day.

Section 23 and section 35 both state that the landlord must offer the tenant at least 2 opportunities, as prescribed, for the inspection. The Act places the obligation on the landlord to complete the condition inspection report in accordance with the regulations and states that both the landlord and tenant must sign the condition inspection report and the landlord must give the tenant a

copy of that report in accordance with the regulations. Part 3 of the Regulations goes into significant detail about the specific obligations regarding how and when the Start-of-Tenancy and End-of-Tenancy Condition Inspections and Reports must be conducted.

In regards to the landlord's allegation that the tenant failed to participate in the landlord's effort to arrange a move-out inspection, the legislation does anticipate and provides a process for such situations. In particular, section 17 of the Regulation details exactly how the inspection must be arranged as follows:

- (1) A landlord must offer to a tenant a first opportunity to schedule the condition inspection by proposing one or more dates and times.
- (2) If the tenant is not available at a time offered under subsection (1),
 - (a) the tenant may propose an alternative time to the landlord, who must consider this time prior to acting under paragraph (b), and
 - (b) the landlord must propose a second opportunity, different from the opportunity described in subsection (1), to the tenant by providing the tenant with a notice in the approved form.
- (3) When providing each other with an opportunity to schedule a condition inspection, the landlord and tenant must consider any reasonable time limitations of the other party that are known and that affect that party's availability to attend the inspection.

Section 35(5) of the Act states that the landlord must make the inspection and complete and sign the report without the tenant if

- (a) the landlord has complied with subsection (2), and
- (b) the tenant does not participate on either occasion.

Both sections 25 and 35 which deal with the Start of Tenancy and the End of Tenancy Condition Inspection Report requirements contain similar provisions as outlined above.

In this instance, the landlord conducted the move-out inspection without the tenant but failed to follow the formal process specified in the Act and the Regulation by offering the tenant two opportunities on the applicable form. Moreover, the move-out portion of the report is not dated nor signed by the landlord. Therefore, I find that the evidentiary weight of the Move-Out Inspection Report has been adversely affected.

Although the landlord had submitted documentary evidence, which verified that the landlord paid for services and repairs, this evidence would only satisfy element 3 of the test for damages.

Accordingly I find that the portion of the landlord's application relating to the claim for cleaning and repairs must be dismissed.

I find that the landlord is entitled to a total monetary compensation in the amount of \$10,050.00 comprised of \$2,500.00 rental arrears for four months and the \$50.00 fee for filing the application.

Conclusion

I hereby order under section 67 that the landlord may retain the tenant's security deposit and interest of \$1,260.04 in partial satisfaction of the claim and is entitled to a monetary order for the remainder in the amount of \$8,789.96. This order must be served on the tenant and can be enforced through Small Claims Court.

The remainder of the landlord's application is dismissed without leave.

May 2010

Date of Decision

Dispute Resolution Officer