



Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing and Social Development

Decision

Dispute Codes:

MND, MNDC, MNSD, 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 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 were represented at the hearing.

Preliminary Matter: Parties to the Dispute

The Individual, TM, who appeared on behalf of the tenant, AT, disputed being included on the landlord's application, as party to the proceedings. TM advised that, although she assisted the tenant in submitting the application, she was never a co-tenant living in the same rental unit. TM also testified that she was not identified on the tenancy agreement as being a co-tenant nor even an occupant of the subject address. I find that the copy of the tenancy agreement submitted into evidence only names AT as the tenant and does not show any other co-tenants or occupants. Therefore, I find that TM cannot be named as a party in the landlord's application and can have no standing in the proceedings before me, other than representing the tenant AT who is currently stationed abroad. I amend the application to exclude TM as a party in the landlord's application seeking monetary compensation against the tenant.

Issue(s) to be Decided

The landlord was seeking to retain the security deposit and receive a monetary order for damage to the unit and for money owed or compensation for damage and loss under

the Act for a total claim originally set at \$1,350.00 but amended to \$915.24 plus reimbursement of \$50.00 for filing. The issue 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 to retain the security deposit.

Background and Evidence

The parties entered into a fixed-term tenancy agreement that was to run from February 15, 2010 and expire on August 31, 2010 with rent set at \$725.00. A security deposit of \$365.00 was paid and a move-in condition inspection report was completed and signed by the parties. On February 27, 2010, the tenant gave notice terminating the tenancy before the expiry of the fixed term and vacated on March 31, citing the problem of continuing noise as the reason.

The landlord testified that this was in violation of the tenancy agreement which was a fixed term set to end on August 31, 2010. The landlord testified that a term in the tenancy agreement imposed a charge of \$500.00 for liquidated damages if the tenant ends the tenancy prior to the expiry of the fixed term. The landlord had submitted a copy of the tenancy agreement showing that this term was agreed to by both parties. The landlord testified that, by vacating early, regardless of the tenant's personal reasons, the liquidated damages were owed.

The landlord pointed out that steps were taken as quickly as possible to resolve the tenant's noise complaint, which was the tenant's stated reason for leaving, as soon as it was reported. The landlord stated that a contractor was engaged to inspect the premises without undue delay and the problem was resolved by the end of March 2010.

The tenant testified that ending the tenancy was the only option because the tenant's complaints about the noise were not addressed in a timely manner to enable him to sleep in the unit. The tenant stated that he was fully satisfied with the suite, other than the noise factor, but felt justified in terminating the tenancy because of the serious impact of the noise and sleep interruption on his quality of life and career. The tenant

disagreed with the \$500.00 charge for liquidated damages. The tenant pointed out that the landlord had immediately re-rented the suite without any loss. The tenant's position was that the landlord should share responsibility for the ending of the tenancy and should not be entitled to charge the tenant the \$500.00 in liquidated damages.

The landlord testified that under the tenancy agreement the tenant was required to have the window coverings professionally cleaned and the carpets professionally shampooed at the end of the tenancy. Both parties concurred that neither the draperies nor the carpets were ever professionally cleaned by the tenant. The landlord testified that the cleaning was done on the tenant's behalf at a cost of \$99.75 for the carpet cleaning and \$35.49 for the curtains, for which compensation was being claimed. The landlord had submitted copies of the invoices for these expenditures.

The tenant testified that the tenancy had only been for a six-week duration and for part of this period the tenant was not even residing in the unit due to intolerable noise that kept him awake. Yet, despite the intolerable conditions, he had paid full rent for the suite. The tenant testified that he left the unit in a reasonably clean condition, including the carpet and drapes. The tenant stated that neither of these needed cleaning as they were already in a clean state. The tenant stated that no identifiable damages had resulted from the tenant's failure to pay to get the clean finishes re-cleaned. The tenant was disputing the entitlement to compensation based on the landlord's unreasonable actions in needlessly incurring costs to professionally launder drapes and carpets that were already sufficiently clean.

The landlord testified that when the tenant vacated the premises, in addition to failing to professionally clean the window coverings and the carpets, the rest of the unit was also not left reasonably clean as required by the Act and the agreement. The landlord testified that a move-in condition inspection was conducted together, but the move-out condition inspection was completed by the landlord in the tenant's absence as the tenant did not attend on the pre-arranged date despite agreeing to be there. A copy of the move-in/move-out condition inspection report was submitted into evidence to

illustrate that the unit was not clean at the time of vacating. Only the move-in portion of this document was signed by the parties. The landlord stated that 7 hours of cleaning were required at a cost of \$40.00 per hour, for a total claim against the tenant of \$280.00. The landlord also pointed out that, under the Act, the tenant's right to return of the deposit was extinguished due to his failure to cooperate in the move-out inspection.

The tenant disputed the landlord's testimony that the suite was not cleaned prior to vacating. The tenant stated that the rental unit consisted of a small bachelor suite. The tenant stated that a total of four hours labour was spent by the tenant to thoroughly clean the suite. The tenant stated that his failure to attend the scheduled move-out inspection was based on the tenant's confidence that everything in the unit was cleaned and his trust that the landlord would not make any dishonest claims.

The tenant testified that the charges being claimed for cleaning were a shock. The tenant also took exception to the exorbitant hourly rate of \$40.00 and objected to the landlord's categorization of the hole for TV cable as "damage", the repair of which the landlord claimed to have paid for, particularly as the tenant did not subscribe to cable services. The tenant's position was that there was no basis for the claimed compensation for cleaning and it should be rejected outright.

Analysis

Section 6 of the Act states that the rights, obligations and prohibitions established under the Act are enforceable between a landlord and tenant under a tenancy agreement and that a landlord or tenant may make an application for dispute resolution if the landlord and tenant cannot resolve a dispute referred to in section 58 (1).

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 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 authority to determine the amount and order payment in such circumstances and 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 this damage or loss 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 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 value of the loss or damage. Finally it must be proven that the claimant took reasonable steps to mitigate the damage or losses that were incurred.

Section 58 states that, except as restricted under the Act, a person may make an application for dispute resolution in relation to a dispute with the person's landlord or tenant in respect of: (a) rights, obligations and prohibitions under the Act; (b) rights and obligations under the terms of a tenancy agreement that are required or prohibited under the Act, or(ii) that relate to the tenant's use, occupation or maintenance of the rental unit, or common areas or services or facilities.

I find that the landlord put forth three claims that apparently pertained to enforceable terms under the tenancy agreement and one claim based on section 32 of the Act for cleaning costs.

The first matter pursuant to the tenancy agreement was the claim for liquidated damages in the amount of \$500.00. I find that the tenancy agreement submitted into evidence by the landlord clearly contained a term imposing these liquidated damages that would apply if the tenant ended the tenancy prior to the fixed term.

In regards to the tenant's argument that the nightly noise affected the tenant's quiet enjoyment of the suite sufficient to justify the premature ending of the tenancy, I find that the Act gives a tenant other options besides terminating the tenancy. The tenant could have remained in the unit and pursued dispute resolution to obtain an order that the landlord take action to eliminate the noise. There are also provisions in the Act that give the tenant a right to make an application to claim compensation seeking a past or current rent abatement based on proof that the noise interference devalued the tenancy.

However, the above claims by the tenant would be need to be presented through an application filed by the tenant. The matter before me at present is the *landlord's* application for compensation. In any case, I find that, regardless of any purported violation that may or may not have been perpetrated by the landlord, the tenant had clearly contravened a material term in the agreement by ending the tenancy prior to the fixed term. Therefore, I find the landlord is entitled to receive liquidated damages in the amount of \$500.00.

The second and third claims by the landlord pursuant to terms in the tenancy agreement, related to the requirement for window coverings to be professionally dry cleaned and for carpets to be professionally shampooed at the end of the tenancy. While section 37 of the Act, only requires a tenant to leave the premises, including carpets and window coverings in a reasonably clean state, the landlord's position was that the tenancy *agreement* signed by these parties imposed an absolute requirement for the tenant to ensure that drapes and carpets were actually professionally cleaned at the end of the tenancy regardless of the duration of the residency.

I find that, to verify that this term applied, the landlord would need to submit documentation showing that it was contained within the agreement. However the portion of the tenancy agreement submitted into evidence by the landlord did not contain the terms being cited to support the claim. I find that the landlord failed to present sufficient evidence proving that the tenant had violated a term in the agreement and therefore this portion of the landlord's application must be dismissed.

As mentioned, 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. The landlord gave disputed verbal testimony that the unit was not left reasonably clean under the Act and purported to rely on the data contained in the move-out condition inspection report to support the landlord's allegation.

Section 35 of the Act states 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 and the landlord must offer the tenant at least 2 opportunities, as prescribed, for the inspection. The Act also requires that the landlord must complete a condition inspection report in accordance with the regulations with both signing the condition inspection report and a copy of provided to the tenant.

However, the Act does permit the landlord to conduct the inspection and sign the report without the tenant if the landlord has already offered the two opportunities and the tenant did not participate on either occasion.

Section 20(1) of the residential Tenancy Regulation also requires that standard information must be included in a condition inspection report completed under section 23 or 35 of the Act. This includes the (a) the correct legal names of the landlord, the tenant and, if applicable, the tenant's agent; (b) the address of the rental unit being inspected; (c) the date on which the tenant is entitled to possession of the rental unit; (d) the address for service of the landlord; (e) the date of the condition inspection;

I find that the condition inspection document submitted into evidence by the landlord did provide the date for the *move-in* inspection. However, no date was indicated on the document for the *move-out* inspection. Moreover, although both parties signed the move-in portion of the document, neither the landlord nor the tenant had signed to verify the date that the move-out inspection was done. Being that the move out inspection report was not properly completed in accordance with the Act and Regulation, I find that this has negated the evidentiary weight of the move-out inspection report.

In this instance I find that the parties are completely at odds with one another's facts regarding the condition of the unit upon vacating. However, I find it is not necessary to determine whose verbal testimony is more credible or which set of "facts" is more believable because the claimant has not succeeded in sufficiently proving that all elements in the test for damages were satisfied to prove that the unit was not left in a reasonably clean state. Therefore the burden of proof has not been sufficiently met, and I find that the portion of the landlord's application and monetary claim relating to the \$280.00 cleaning charges must be dismissed.

Cconclusion

Based on the testimony and evidence presented during these proceedings, I find that the landlord is entitled to monetary compensation of \$500.00 for liquidated damages. I order that the landlord retain the \$365.00 security deposit in partial satisfaction of the claim, leaving \$135.00 outstanding. I hereby issue a monetary order to the landlord in the amount of \$135.00. This order must be served on the tenant and can be enforced through small claims court if necessary.

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

July 2010

Date of Decision

Dispute Resolution Officer