



Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing and Social Development

Dispute Codes:

MNDC, MNR, MNSD, FF

Introduction

This Dispute Resolution hearing was held 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 satisfaction of the claim.

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

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

The landlord was seeking compensation for rent loss, cleaning and damages and the issues to be determined 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.

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

Background and Evidence

The tenancy began on May February 1, 2010 as a fixed term to end on July 31, 2010 with rent at \$1,720.00, of which \$70.00 was allocated to utilities. The tenant paid a security deposit of \$825.00. The tenancy ended on May 1, 2010 pursuant to a One-Month Notice to End Tenancy for Cause, which the tenant did not dispute and vacated the unit. Submitted into evidence was the following: proof of service, a copy of the tenancy agreement, a copy of the move-in and move out condition inspection report, a copy of the one-month notice, payment records, copies of invoices and copies of communications and notices, as well as a written statement by the landlord.

The landlord testified that the tenancy ended because of the tenant's noncompliance with the Act and agreement due to noise in the unit. The landlord testified that

The landlord testified that the tenant had paid rent to the end of April 2010 and left on May 1, 2010, but despite ongoing efforts to find a replacement tenant for May 1, the unit

was vacant for the month of May and the landlord had incurred a rent loss in the amount of \$1,650.00 which is being claimed.

The tenant disputed the loss of rent claim stating that, although the One-Month Notice had specified an effective date of May 15 2010, he left earlier at the landlord's urging to ensure the unit was available to rent for May.

The landlord testified that the tenant left the unit in an unclean condition necessitating 4 hours of cleaning at a cost of \$48.00. The landlord referred to the move-out condition inspection report signed by the tenant which appeared to indicate that some areas in the kitchen and bathroom were left in fair condition on move-out, as indicated by the notation, "F" beside the area in question.

The tenant disputed the cleaning costs. The tenant testified that the unit was left in a reasonably clean condition and stated that the "F" notations and comments on the move-out inspection form were added after the tenant had already signed it.

The landlord testified that the tenant had received a copy of the strata bylaws and had signed Form 'K' to confirm that he was aware of the rules and agreeing to pay any fines imposed for breaching the strata bylaws.

The landlord testified that there was a total of \$300.00 in fines imposed by the strata council for noise infractions by the tenant. The landlord referred to a March 31, 2010 letter from the strata council indicating that there were six complaints, three of which were found to be legitimate and rendering a fine of \$100.00 for these noise infractions occurring between February 3 to March 23, 2010. A second letter from the strata council apparently written the following day, on April 1, 2010, advised the landlord that there had been 3 noise complaints from February 26 until April 1, 2010 and informed the landlord that only a \$50.00 fine would only be imposed for the complaints. The landlord stated that a charge of \$300.00 was levied, but that the invoice or receipt for the fees paid had not been submitted into evidence.

The tenant testified that at the end of the tenancy he was verbally advised by the landlord that fines of \$200.00 would need to be reimbursed.

The landlord testified that costs were incurred in the amount of \$79.00 to change the mailbox lock due to the tenant's failure to return the keys. The landlord did not submit an invoice or receipt for the re-keying, but stated that this was a standard charge imposed by the post office.

The tenant disputed the claim and stated that he never used the mailbox, nor did he receive any keys.

The landlord was also claiming a charge of \$100.00 billed by the strata council for a move-out fee. The landlord stated that this was indicated in the strata by-laws and the tenant had acknowledged this in signing Form K.

The tenant testified that he was never informed that the move-out charge would need to be paid by him and pointed out that there was nothing in the tenancy agreement nor specifically mentioned on the Form K document that would indicate he had agreed to pay a \$100.00 move-out fee.

The landlord was further claiming \$153.30 billed by the strata council to remove phone access to the security system. The landlord testified that this was necessary to eliminate the tenant's access to the security system and was a charge levied by the strata corporation. The landlord stated that this was a charge that landlord did not have any prior knowledge would be levied. The landlord had submitted account information showing that on May 31, 2010 the strata council had charged the landlord a fee of \$153.30 to "*Remove/delete tel. No.*"

The tenant disputed this claim on the basis that he was never apprised that this cost would be his responsibility and in fact he did not understand precisely what the charges were for.

Analysis

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 applicant landlord.

In regards to the landlord's claim for loss of rent for May 2010, I find that the landlord has established that the tenancy was terminated due to a violation of the fixed term agreement by the tenant and this resulted in a loss of \$1,650.00 rent for the month of May 2010. I find that the landlord did take reasonable steps to mitigate the loss and although the tenant cooperated by leaving in time to have the unit possibly re-rented by May 1, 2010, the landlord was not successful despite the best efforts of both parties. I find this claim meets all elements of the test for damages and the landlord is therefore entitled to compensation for loss of rent for May 2010 in the amount of \$1,650.00

In regards to the \$48.00 cleaning costs, I note that section 32 of the Act states that a tenant must maintain reasonable health, cleanliness and sanitary standards and repair damage to the rental unit caused by the actions or neglect of the tenant. Section 37(2) of the Act states that, when a tenant vacates a rental unit, it must be left reasonably clean, and undamaged except for reasonable wear and tear. I find that on a balance of probabilities, the unit was left in a reasonably clean state needing only minor touch-ups by the landlord. Accordingly, I dismiss this portion of the landlord's claim.

In regards to the landlord's claim of \$300.00 for fines regarding noise bylaw infractions, I find that, while the tenant did agree to pay any fines levied for breaching bylaws, the landlord has only provided verification of \$50.00 charged by the strata council. I find that the most recent letter in the evidence, dated April 1, 2010, appeared to indicate that the \$100.00 fine discussed in the March 31 letter was reduced to \$50.00. The account statement from the strata council verified that on April 1, 2010, the landlord was charged \$50.00 for "*By law infraction*". Accordingly I find that the tenant must pay a \$50.00 fine.

In regards to the claim for rekeying the mailbox, section 37 also provides that the tenant must give the landlord all the keys or other means of access that are in the possession or control of the tenant and that allow access to and within the residential property. In this instance, the tenant has denied ever receiving a mailbox key. I find that, in the absence of documentary evidence, such as a receipt, the landlord has not sufficiently proven that the claimed expenditure of \$79.00 was paid and as such has failed to meet element 3 of the test for damages.

In regards to the charge of \$100.00 apparently billed by the strata council for a move-out fee, I find that the account statement from the strata council in evidence did not

show any “move-out fee”. Moreover, I find that while the form K constitutes the tenant’s consent that he had read and would follow the strata bylaws and would pay fines charged for violations, there was nothing specific either in the Form K nor the tenancy agreement to indicate a move-out fee had ever been charged. Accordingly, I find that this portion of the landlord’s application must be dismissed.

In regards to the \$153.30 billed by the strata council apparently to remove the tenant’s phone access to the security system, I find that it is not clear why this fee was charged. In any case, I find that the tenant was not made aware in advance that the expense would be billed back to the tenant. Given the above, I find that this portion of the landlord’s claim must be dismissed.

Based on the testimony and evidence presented during these proceedings I find that the landlord is entitled to monetary compensation of \$1,750.00 comprised of \$1,650.00 loss of rent, \$50.00 for a bylaw infraction fine and \$50.00 for the cost of the application. I order that the landlord retain the tenant’s security deposit and interest and interest of \$825.00 in partial satisfaction of the claim and issue a monetary order for the remainder of \$925.00.

Conclusion

Based on the evidence and the testimony, I hereby issue a monetary order in favour of the landlord for \$925.00 This order must be served on the landlord by the tenant and may be filed in the Supreme Court, (Small Claims), and enforced as an order of that Court.

September 2010

Date of Decision

Dispute Resolution Officer