

DECISION

Dispute Codes MND, MNDC, FF

Introduction

This hearing dealt with the landlord's application pursuant to section 67 of the *Residential Tenancy Act* (the *Act*) for a monetary order for unpaid rent and for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement. He also applied for authorization to recover his filing fee for this application from the tenant pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present evidence and to make submissions. The landlord testified that he sent the tenant a copy of his application for dispute resolution hearing package on June 10, 2010 by registered mail. The tenant confirmed that he received the landlord's application. I am satisfied that the landlord served the application for dispute resolution hearing package in accordance with the *Act*.

The tenant testified that he sent the landlord his evidence by registered mail on August 26, 2010. He provided a Canada Post Tracking Number and testified that Canada Post records show that a delivery letter was left for the landlord. The landlord testified that he had not received the tenant's evidence or the notice from Canada Post.

The landlord testified that he delivered his evidence package to the Residential Tenancy Branch (RTB) early on the morning of the hearing. He said that this evidence included a copy of the move-in condition inspection report completed on November 16, 2007, photographs taken after the tenant vacated the premises, and various receipts that substantiated the costs he incurred to clean and repair the premises after the tenant left. He said that he did not send this evidence package to the tenant. He said that some of this evidence would have been provided in the tenant's earlier application for dispute resolution regarding the return of his security deposit.

The tenant provided undisputed testimony that he never received a copy of the move-in condition inspection report and that he was unable to comment on the photographs or receipts because the landlord had not sent these to him. The landlord has not given the tenant a fair opportunity to know this portion of the claim. I have not considered the evidence provided by the landlord to the RTB on the morning of the hearing.

Issues(s) to be Decided

Is the landlord entitled to a monetary order? Is the landlord entitled to recover his filing fee for this application from the tenant?

Background and Evidence

The landlord testified that this tenancy commenced on November 15, 2007 by way of a fixed term tenancy. At the end of that fixed term, the tenancy continued until the tenant vacated the rental premises on July 25 or 26, 2009. By then, the tenant was paying \$1,100.00 in monthly rent. The landlord testified that the tenant paid a security deposit of \$547.50 when the tenant moved into the rental premises in November 2007. As per a February 12, 2010 decision of a Dispute Resolution Officer, the landlord was ordered to repay double the security deposit to the tenant, an amount then set at \$754.46.

The landlord testified that the tenant's wife arranged to meet with him to conduct a move-out condition inspection on July 31, 2009 at 3 p.m., but changed her mind. He testified that he made no subsequent attempt to reschedule a joint move-out condition inspection of the rental premises. Instead, he took photographs of the condition of the rental premises and proceeded to clean and repair the damage caused by the tenant. His application for a monetary order included the following items which he maintained were necessary as a result of the tenant's actions:

Item	Amount
Carpet Cleaning	\$205.80
Pick-up of Furniture	50.00
NSF Charge on Cheque	25.00
Painting of Ceiling in Dining Room	100.00

Repair Mildew under Sink	50.00
Total Monetary Award	\$430.80

At the hearing, the landlord testified that he had not provided any receipts to substantiate his claim for reimbursement of an NSF cheque from the tenant.

Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, a Dispute Resolution Officer may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant, in this case the tenant, must 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 other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

The landlord has not provided sufficient evidence to meet the burden of proof for much of his claim for damage and loss. Until the morning of this hearing, the landlord provided no written evidence to substantiate his claim that there was damage or loss and that the tenant was responsible.

The landlord did not dispute the tenant's testimony that some of the landlords claim in this application varied from the costs claimed in response to the tenant's previous dispute resolution application. The tenant entered written evidence that the landlord had claimed \$206.75 in damage when the landlord deducted this amount from the tenant's security deposit plus interest in October 2009.

The landlord did not dispute the tenant's assertion that the tenant was not provided a copy of the move-in condition inspection report. The landlord did not make two attempts to arrange for a joint move-out condition inspection with the tenant. He did not

complete a move-out condition inspection report, nor did he provide a copy of any move-out report to the tenant.

The tenant gave sworn testimony that he did not steam clean the carpets at the end of the tenancy. He did not dispute the landlord's assertion that the tenancy agreement required the tenant to steam clean the carpets before he moved out. The tenant did not dispute the landlord's claim that the landlord had the carpets steam cleaned after the tenant vacated the rental premises. However, the tenant noted that the landlord's claim for steam cleaning of the carpets increased from \$141.75 in October 2009 to \$205.80 in the present application.

I accept the testimony of the parties that the rental premises were not steam-cleaned at the end of the tenancy. I grant a monetary award to the landlord for \$141.75 to steam clean the tenant's carpets. I choose this amount rather than the \$205.80 claimed in the landlord's application. I do so because the landlord has not provided sufficient evidence or testimony to substantiate the increase in this cost from October 2009 to the landlord's June 2010 claim for this expense.

Conclusion

I grant the landlord a monetary Order for \$141.75. As the landlord's application has been only partially successful, I do not allow him to recover his filing fees from the tenant.

The landlord is provided with these Orders in the above terms and the tenant must be served with a copy of these Orders as soon as possible. Should the tenant fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders of that Court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.