



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes:

MNDC, MND, MNR, MNSD, FF

Introduction

This Dispute Resolution hearing was set to deal with an Application by the landlord for an order of possession, and a monetary order for rent owed and compensation for a fine imposed by the strata council.

The parties had since made an agreement that the tenant would move out in mid-October and the landlord would accept retention of the security deposit in lieu of October rent. The landlord therefore amended the application to eliminate the request for an Order of possession and the request to keep the deposit. The landlord also changed the claim for compensation to \$368.00, which included a fine of \$200.00 and \$168.00 for broken glass in the common access doors, imposed by the strata council.

Both parties appeared and gave testimony during the conference call.

Issue(s) to be Decided

The landlord was seeking a monetary order for a fine levied and for damage caused by the tenant.

The issues 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 of rent.

Background and Evidence

The landlord testified that the tenancy began in April 2010 with rent of \$1,550.00. The tenancy was for a fixed term, but as of October 12, 2010 the parties mutually ended the tenancy by consent, on terms that were accepted by both.

The landlord testified that there was damage done to a glass fire door panel and the strata council possessed photo evidence to verify that the tenant and another individual were in the vicinity of the door at the time it was damaged. Although there was no photo coverage of the area where the door was damaged, video records evidently

confirmed that the tenant had physically bumped another door in the corridor which did not break. The landlord testified that based on the photos and witness accounts setting the probable time, the strata council determined on a balance of probabilities, that the tenant was responsible and the landlord was charged \$168.00 for the repair.

The tenant denied causing damage and pointed out there were no photos that showed him actually perpetrating the damage in question and that the alleged witnesses who established the time-frame in which the damage occurred were not present to be cross examined. The tenant disputed the claim and the allegations upon which it was based.

The landlord testified that despite being given a copy of the strata rules, the tenant failed to comply by providing proper notice to the strata corporation of the precise date of the move. The landlord pointed out that when the tenant signed the tenancy agreement, it included a commitment to abide by the strata rules. The landlord provided copies of the agreement and excerpts from the strata rules into evidence. The landlord stated that, because of the tenant's violation, the strata imposed a fine of \$200.00 and the landlord was seeking compensation.

The tenant disputed this claim based on the fact that the tenancy had ended at the landlord's insistence and the tenant had made the landlord aware of the date by which the unit would be vacated. The tenant provided a copy of an email dated October 4, 2010 stating that the tenant would be out of the unit by noon on October 11. The tenant stated that it was their practice to only deal with tenancy issues through the landlord and they never addressed any communications to the strata directly, especially given that the tenant felt persecuted by the strata council. The tenant believed that the responsibility for paying the fine did not rest with the tenant.

Analysis

Loss of Rent and Damages

The landlord's claim for damages is governed by 7(a) of the Act which 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. 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 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.

I find that section 32 of the Act imposes responsibilities on both the landlord and the tenant for the care and cleanliness of a unit. A landlord must provide and maintain residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law, having regard to the age, character and location of the rental unit to make it suitable for occupation by a tenant. A tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access. A tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant but a tenant is not required to make repairs for reasonable wear and tear.

I find that, if it was proven that the tenant perpetrated the damage to the door, this would constitute a violation under section 32 of the Act. I accept that the landlord was charged the costs of repairs. However, notwithstanding the fact that the strata council had conclusively determined that the tenant caused the damage, for the purposes of a claim under the Residential Tenancy Act, the landlord must still meet the burden of proof in verifying the monetary claim sufficient to satisfy each element in the test for damages. In this instance, although the circumstantial evidence is significant, I find that the landlord has not sufficiently met element 2 of the test for damages and therefore the claim for \$168.00 for the damaged door must be dismissed.

In regards to the fine imposed due to the tenant's failure to notify the strata of the precise moving date, I find that there was a clear requirement under the strata rules to ensure that notice was given. Even if I accept the tenant's testimony that he always dealt with the strata through the landlord, I find that the date of the actual move-out was never provided by the tenant to the landlord. Accordingly, I find that the landlord has met each element in the test for damages and is entitled to be reimbursed \$200.00 for the fine owed to the strata council.

Conclusion

Based on the evidence presented during these proceedings, I find that the landlord is entitled to total monetary compensation in the amount of \$250.00 comprised of \$200.00 for the fine and the \$50.00 cost of the application. I hereby grant the landlord a monetary order for this amount. This order must be served on the landlord and may be filed in the Provincial Court (Small Claims) and enforced as an order 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*.

Dated: November 2010.

Dispute Resolution Officer