

## **Decision**

### **Dispute Codes:**

MNR, MNDC , MNR, MNSD, FF

### **Introduction**

This Dispute Resolution hearing was set to deal with an application by the landlord for a monetary order for rent owed and for damages for repairs and cleaning and to keep the security deposit as compensation. The landlord was also seeking to be compensated for the cost of the application.

Both the landlord and tenant appeared and each gave testimony in turn.

### **Issue(s) to be Decided**

The issues to be determined based on the testimony and the evidence are:

- Whether the landlord is entitled to monetary compensation under section 67 of the *Act* for rental arrears, loss of rent and other damages. This determination is dependant upon answers to the following questions:
  - Has the landlord proven that rent was owed but unpaid?
  - Has the landlord submitted sufficient evidence to prove that a claim for damages or loss should succeed pursuant to section 7 and 67 of the *Act*?

### **Background and Evidence**

Submitted into evidence a copy of a move-in/move out inspection report with the move-in portion signed by both parties, proof of service, a copy of a "Notice of Final Opportunity to Schedule a Condition Inspection for June 25, 2010 at 1:00 p.m.", a copy of a letter from the tenant dated June 24, 2010 containing the forwarding address, an invoice for cleaning and repairs totaling \$1,229.76 and a copy of an invoice for carpet-cleaning for \$203.70. The landlord was claiming the above costs and \$2,200.00 rent owed for the month of June 2010 and \$100.00 for the moving fee to the Strata Council. The total claim was for \$3,733.46.

The landlord testified that the tenancy began on October 1, 2009. The rent was \$2,200.00 per month and a security deposit of \$1,100.00 and pet damage deposit of \$1,100.00 were paid. The landlord testified that when the tenant failed to pay rent for June, a Ten-Day Notice was issued. The landlord stated that the tenant did not dispute the Notice and moved out on June 24, 2010 without paying the \$2,200.00 owed. The landlord was seeking compensation for this rent.

The landlord testified that on June 24, 2010, a condition inspection was mutually agreed upon for that afternoon. However, the tenant cancelled the appointment based on a wet carpet situation. The landlord stated that he did arrive that afternoon to drop off a completed Notice of Final Opportunity to Schedule a Condition Inspection with a proposed time of June 25, 2010 at 1:00 p.m. The landlord stated that the tenant did not attend and the inspection was completed without the tenant. According to the landlord the unit was not properly cleaned and there was damage that had to be repaired. The landlord testified that the carpets smelled of dog urine, the walls were coated with nicotine, the blinds were dusty and there were more than 100 pin holes in the drywall. The landlord testified that the work was done and he was billed 1,229.76 for cleaning and repairs and \$203.70 for carpet-cleaning. The landlord stated that the Strata also charged \$100.00 for the move-out fee.

The tenant acknowledged that rent for June was not paid and that this occurred when the landlord had evidently misplaced post-dated cheques given to the landlord's agent at the start of the tenancy. The tenant stated that because the tenant was out of town, there was a delay in furnishing replacement cheques and by the time they returned, the landlord had issued a Ten Day Notice to End Tenancy for Unpaid Rent. The tenant stated that the termination of the tenancy was accepted because they too wanted the tenancy to end due to ongoing problems with the suite and the tenancy. The tenant stated that they expected that the security and pet damage deposits would be retained by the landlord in lieu of rent owed. The tenant stated that they were not given an opportunity to reschedule the condition inspection to fit their schedule and the landlord had arbitrarily imposed a time when he was aware that the tenant would not be available. The tenant also took issue with the contents of the move-out condition inspection report pointing out that there were inaccuracies, such as a notation that window coverings in the kitchen were dirty, when there was no window in the kitchen and other obvious errors. The tenant stated that the inspection report even verified that the tenant had replaced nonfunctioning light fixtures themselves during the tenancy. The tenant testified that they had the carpets professionally cleaned and had hired cleaners to fully clean the unit. The tenant's position was that the unit was left reasonably clean in compliance with the Act and in a far better state of hygiene than when they took possession. In regards to the alleged need for repairs, the tenant

testified that the unit was not pristine when they moved in and showed signs of wear and tear. The tenant stated that the contractor may have been renovating walls that were already in bad shape with drywall nail-heads exposed. In regards to the invoice submitted by the landlord, the tenant alleged that, after calling the company in question, it was discovered that this was not a bon fide receipt from a genuine cleaning or renovation company, but was evidently concocted by the landlord. In any case, the tenant's position was that the work and charges were not necessary for the repairs, cleaning or carpet shampoo. In regards to the \$100.00 strata fee, the tenant disputed that this was their responsibility and pointed out that the landlord did not provide evidence for any aspect of the strata fee claim.

### **Analysis**

In regards to the landlord's claim for rent owed, section 26 of the Act provides that rent must be paid when it is due and the tenant admitted that this part of the Act was not followed. I find that the landlord is entitled to rent of \$2,2.00 for the month of June 2010.

In regards to the landlord's monetary claims for costs of cleaning and repairs to the suite, I note that section 7(a) of the Act 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.

However, 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.

Under section 37 (2)(a) of the Act any tenant failing to leave the rental unit reasonably clean, and undamaged *except for reasonable wear and tear* upon vacating would be liable for any costs or losses incurred by the landlord that flow from this failure to comply with the Act.

In regards to the move-in inspection, section 23(1) of the Act requires that the landlord and tenant together must inspect the condition of the rental unit on the day the tenant is entitled to possession of the rental unit or on another mutually agreed day. I find that this did not occur.

Both sections 23(3) for move-in inspections and section 35 for the move-out inspections 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 both the landlord and tenant must sign the condition inspection report. 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 did not cooperate, the Act has provisions that anticipate 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.

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 (3), 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 move-in inspection report was done by the tenant and the move-out inspection was completed only by the landlord in the tenant's absence.

To be valid, an inspection must be done upon the vacating of the unit as required by the Act. I find the practice followed by this landlord giving the tenant a Notice for the final opportunity at the same time as trying to schedule the inspection foiled by the damp carpets compromised the intention of the Act.

Regardless of the above issue, I also find that the landlord was not able to prove all elements in the test for damages and loss. I find that the invoice submitted to support the repair and cleaning expenditure was not sufficiently detailed and its veracity was validly challenged by the tenant. I find that, while the landlord may have paid for a second cleaning of the carpet, the need for this was also challenged by the tenant and the landlord's verification hinged solely on a written comment from his own contractor, who was not present as a witness. I find that the landlord has not sufficiently met the burden of proof to justify compensation for cleaning an repairs.

Whether the strata move-out fee was paid or not, I find that the landlord did not offer sufficient proof that this was a charge for which the tenant had agreed to be responsible under the tenancy agreement. Accordingly, I find that the landlord has failed to sufficiently meet the burden of proof to support the claim.

Given the above, I find that the landlord's claim for damages must be dismissed.

### **Conclusion**

Based on the testimony and evidence presented during these proceedings, I find that the landlord is entitled to total monetary compensation in the amount of \$2,200.00 for rent owed and unpaid for the month of June 2010 . I order that the landlord may retain the tenant's security deposit and pet damage deposit of \$2,200.00 in total satisfaction of the landlord's claim. This order must be served on the Respondent and may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

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

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.

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Dispute Resolution Officer