

Decision

Dispute Codes:

MND, MNDC, MNSD, FF

Introduction

This Dispute Resolution hearing was a re-hearing 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.

A previous hearing had been scheduled on applications by both parties and was held on July 2, 2010. Both the landlord's claim for damages and the tenant's claim for the return of their security deposit were found to be premature and the applications were dismissed with leave to reapply. A finding was made by the dispute resolution officer at that time that the landlord had received the tenant's forwarding address as of the date of delivery of the dispute resolution decision issued on July 2, 2010.

On July 12, 2010, the landlord reapplied and the hearing today dealt with the landlord's subsequent application and claim for damages. Despite being personally served on July 13, 2010, the tenants did not appear.

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

The landlord was seeking total damages of \$835.00 and to retain the security deposit in partial satisfaction of the claim with a monetary order for the rest.

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

- Whether the landlord was entitled to monetary compensation under section 67 of the Act for damages or loss and to retain the security deposit. This determination was dependant upon answers to the following questions:
 - Has the landlord submitted proof that the claim for damages or loss is supported pursuant to *section 7* and *section 67* of the Act by establishing on a balance of probabilities:

- a) that the damage or loss was caused by the actions of the tenant and in violation of the Act
- b) a verification of the actual costs to repair the damage
- c) that the landlord fulfilled the obligation to do whatever is reasonable to mitigate the costs

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

Background and Evidence

According to the landlord, the tenancy began on November 1, 2009 and ended on June 2, 2010. Although the tenancy agreement indicated that a security deposit of \$225.00 was required, documents submitted and signed by the landlord showed that the security deposit being held for the tenant was \$410.00.

The landlord testified that when the unit was vacated the tenant left the unit unclean and with damages and these are being claimed.

The landlord submitted a hand-written document containing the following data:

Repair Bills

<i>Repair ceiling in basement & broken walls upstairs & painting</i>	<i>520.00</i>
<i>Carpet clean</i>	<i>126.00</i>
<i>Security deposit cash back</i>	<i>40.00</i>
<i>Clean fridge stove & walls & washroom</i>	<i>25.00</i>
<i>Camera</i>	<i>5.98</i>
<i>Develop photos</i>	<i>8.77</i>
<i>Registered mail</i>	<i>9.68</i>
<i>Filing fees</i>	<i><u>100.00</u></i>
<i>Total</i>	<i>835.00</i>
<i>Less Security Deposit</i>	<i><u>410.00</u></i>
<i>Total</i>	<i>425.38</i>

Also written on the sheet below the list was “*You have the original bills & Damage Photo in my file*”. The file number was provided along with the landlord’s signature.

Analysis

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 the authority to determine the amount and order payment in such circumstances.

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 claimant, that being the landlord, to prove the claim.

The landlord was adamant that the original receipts to support the claimed expenditures were submitted with the application for this hearing and stated that he had copies of them right in front of him. However, this evidence was not before me.

Section 32 of the Act contains provisions about obligations to repair and maintain. 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, and having regard to the age, character and location of the rental unit to make it suitable for occupation. 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. However, the tenant is not responsible for normal wear and tear.

I find that the landlord has not sufficiently proven that the tenant violated this section of the Act nor any of the claimed cleaning nor repair expenses because no invoices or other independent verification was provided for the purpose of this hearing. Whether or not these documents had already been submitted for another hearing held in the past, I find that only the evidence that is presently before me for this hearing can be considered in a decision on this application.

In any case, with or without the receipts, the landlord failed to adequately prove there was damage and that the tenant was responsible for alleged damage in violation of the Act. I find that written testimony generated by the landlord, particularly in the absence of a move-in and move-out inspection report signed by both parties, will not suffice to meet the landlord's burden of proof. All of the elements in the test for damages must be met to successfully support a damage claim and I find that none of the elements had been sufficiently proven.

I also find that, despite the landlord's material indicating that the deposit paid was \$410.00, the security deposit shown in the tenancy agreement was \$225.00 and I accept that this is the correct amount being held on behalf of the tenant.

Based on the testimony and evidence presented during these proceedings I find that the landlord is not entitled to any monetary compensation and thus has no right under the Act to retain any portion of the tenant's security deposit.

Conclusion

Given the above, I hereby order that the landlord's application is dismissed in its entirety. Accordingly, I grant a monetary order in favour of the tenant for \$225.00 representing the security deposit. 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.

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