Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes:

MNDC, MND, MNR, FF

Introduction

This Dispute Resolution hearing was set to deal with an Application by the landlord for a monetary order for repairs, cleaning and money owed or compensation for damage or loss under the Act.

The landlord and one of the two co-tenants named as respondent appeared and each party gave testimony in turn.

Issue(s) to be Decided

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.

Background

The landlord testified that a tenancy originally began on September 1, 2008 for a two-year fixed term to end on September 1, 2010. A copy of the tenancy agreement was submitted into evidence. The rent was $1,240.00 per month and a $620.00 security deposit had been paid. A move-in condition inspection was completed and a copy was in evidence. The landlord testified that on February 1, 2010, the tenant gave verbal notice that the tenancy would be ending as one of the co-tenants was moving out of province. However no notice to end tenancy was ever provided in writing so the tenancy evidently continued with only one of the co-tenants remaining and some additional occupants having moved in. The landlord made an application to end the tenancy without notice due to the conduct of the tenants and successfully obtained an immediate order of possession on June 25, 2010.

The landlord testified that at the end of the tenancy a move-out condition inspection was conducted at which time the tenant agreed that the landlord could retain the $620.00 security deposit and interest to pay for the cleaning, damage and losses indicated.

The landlord was claiming the following:

$1,240 loss of rent for July 2010

$1,664 estimated amount for replacing the carpet

$50.00 reimbursement of a filing fee for a previous hearing

$50.00 for the filing fee for this hearing

$71.68 for carpet cleaning costs incurred

$79.01 for advertisement in newspaper

$515.97 for supplies to repair damage

$70.48 for 2 cans of paint

$73.91 to replace closet door

$25.00 to replace lost key fob

$225.96 estimated portion to replace scratched sink

$252.00 estimated portion of labour to install sink

$1,208.00 for labour to clean and repair unit 75.5 hours at $16.00 per hour

$100.00 for administrative costs for preparing for dispute resolution

The total amount being claimed was $5,626.05. The landlord testified that the unit was not re-rented until August 1, 2010. However, no copy of the lease verifying the tenancy start date was submitted into evidence. The landlord testified that the replacement carpet and the replacement sink have not been purchased or installed yet. In regards to the $1,208.00 for labour to do the cleaning and repairs, the landlord submitted a written schedule showing the hours when this work was being done. The landlord also submitted copies of receipts for purchases including $79.01 for the rental ad, $515.97 for numerous items bought on June 27, 2010, $73.91 for the purchase of a door on July 4, 2010, $35.24 for paint purchased on June 30, 2010 and $35.24 for additional paint purchased on July 3, 2010. The landlord submitted into evidence a disc showing photos and videos of the unit and highlighting damage allegedly caused by the tenants.

The tenant testified that the claims for damage were not supported by the facts and evidence. The tenant disputed that the rug needed to be replaced and stated that the inspection report confirmed that the carpet already had some existing stains when they moved in. The tenant disputed that the kitchen sink required total replacement and categorized the scratches as normal wear and tear. The tenant also pointed out that the landlord had not yet incurred any expenditures for these items and had successfully re-

rented the unit “as is”. The tenant disagreed that various supplies purchased by the landlord were necessary. The tenant did not believe that a new closet door was warranted merely because the original door had to be removed. The tenant testified that the landlord freely gave his permission to put up the shelves and repaint one of the rooms. The tenant also disputed claimed costs for labour for cleaning and other repairs allegedly performed by the landlord’s friends. The tenant was of the opinion that these alleged expenditures were not supported by anything but a subjective report created by the landlord and lacked documentary proof of payments made. The tenant did not agree that the unit required complete repainting instead of touch-up painting. The tenant acknowledged that, because he had vacated prior to the move-out inspection, he did not know exactly how much cleaning was required, but he felt that the $620.00 security deposit should have covered this in full, as indicated in writing on the report itself by the co-tenant who did participate in the move-out condition inspection.

Analysis: Monetary Claims

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 the Act, the regulations or the tenancy agreement, the non-complying party 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 to order payment under these circumstances.

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. Once that has been established, the claimant must then provide evidence to verify the actual monetary

amount of the loss or damage and finally must show that a reasonable attempt was made to mitigate the damage or losses incurred.

In regards to the claim for loss of rent for the month of July 2010, the Residential Tenancy Guidelines state that if the landlord elects to end the tenancy for a breach and to sue the tenant for *loss of rent over the balance of the term of the tenancy*, the tenant must be put on notice that the landlord intends to make such a claim. Ideally this should be done at the time the Notice to End Tenancy is given to the tenant. The guidelines suggest that the filing and serving of a claim for damages for loss of rent upon the tenant while the tenant remains in possession of the premises is considered to be sufficient notice. Filing of a claim and service upon the tenant *after* the tenant has vacated may or may not be found to be sufficient notice, depending on the circumstances. (my emphasis)

In this instance, the landlord ended the tenancy under section 56.1without issuing a notice at all. The tenancy was ended by the landlord on June 25, 2010 and the tenant agreed on the move-out inspection report that the landlord was entitled to keep the tenant's security deposit on June 26, 2010 when the report was signed. The tenant also acknowledged that that the damage indicated on the report was present. I find that the documentation verified that the tenant's expectation at that time was that the landlord

could validly justify costs for damage and loss in the amount of at least $620.00 and I find it likely that the tenant's consent was perceived to be limited to this amount.

However, the landlord's monetary claim far exceeds the amount of the tenant's security deposit being held by this landlord. I find that there is not sufficient evidence to verify that any additional monetary claims were discussed prior to the end of the tenancy and before this application.

In regard to the claim of $1,240 loss of rent for July 2010, I find that the landlord did make an effort to mitigate the loss and provided a copy of an invoice showing that the unit was advertised. However, I find that the landlord did not provide sufficient proof, such as a copy of the subsequent lease agreement or copies of communications with the new occupant, to verify the precise date when this new tenancy began. Accordingly I find that the claim failed to meet element 2 of the test for damages and must be dismissed.

In regards to the cleaning and repairs, 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. While 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, a tenant is not required to make repairs for reasonable wear and tear. Section 37(2) of the Act also states that, when a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.

In regard to the landlord's claim of $1,664.00 for the estimated amount for replacing the carpet, I find that the invoice from the carpet cleaner stated that some stains could not be removed. However, the move-in inspection report also confirmed that portions of the carpet was already stained at the start of the tenancy. In addition, I note that the landlord had not yet replaced any of the carpets and has therefore not yet incurred the costs being claimed. Given the above, I find that the landlord is only entitled to the $71.68 cost for carpet cleaning but the claim for the cost of replacing the carpet must be dismissed.

In regard to the claim for $225.96 and $252.00 estimated as the tenant's portion to replace the scratched sink, I accept the tenant's testimony that scratches on the sink do not necessarily warrant the replacement of the entire basin. I find that there would be some wear and tear over the tenancy, particularly if the sink was made of a composite material. I accept that there was likely damage beyond the expected wear and tear that devalued the fixture, but this may fact not warrant its complete removal if it is still functional. A landlord is required under section 7(2) of the Act to mitigate damage and losses. In any case, I find that the landlord has not yet incurred the claimed expenses, being that the claim was based on estimated costs for an item never purchased and for labour not yet completed. Accordingly, I find that the portion of the landlord's claim relating to the kitchen sink damage must be dismissed.

In regard to the claims related to repainting of the unit the age of the finish is relevant. Residential Tenancy Policy Guideline 37 offers guidance in regard to the normal useful life expectancy of particular items. Where an item has a limited useful life, it is necessary to reduce the replacement cost by the depreciation of the original item. I find that the average useful life of paint is deemed to be 4 years. The tenancy in this case was for approximately 2 years.

Again, the landlord would be required to consider mitigation by washing the walls or doing touch-up painting rather than totally repainting the unit. I accept that there were some walls that likely required total repainting due to the extent of the damage and the fact that the colour of one wall was changed by the tenant. Therefore if follows that, after patching the wall, a paint touch-up would not likely suffice. Therefore I find that the

landlord is entitled to a portion of the paint purchased and part of the painting labour. The invoices show that the landlord purchased 7 cans of paint in total and other associated supplies such as trays and brushes. I find that the landlord is validly entitled to $200.00 for the cost of paint and other supplies.

One of the landlord's invoices contained numerous items and while I accept that the landlord did indeed make the purchase, this fact does not necessarily prove that the tenant should be billed for everything the landlord decided to buy. For example, tools or implements would be an operational purchase for which a tenant would not be held responsible. I also find that the landlord chose to replace some items, such as "stained" toilet seats that may possibly have been cleaned instead. Also purchased was a closet door, the age of which was unknown, that could possibly have been repaired rather than replaced. I find that the landlord is entitled to a prorated amount of 50% totaling $36.96 for the door purchase.

I find that the landlord's written statement showing $1,208.00 spent on labour for 75.5 hours at $16.00 per hour performed by his colleagues in combined tasks of painting, repairing and cleaning the unit, failed to show sufficient detail as to what proportion of the work pertained to each task. The landlord also did not provide proof of the payment for the claimed charges.

Despite the difficulty in determining the amount attributable to the tenant, it is evident that the landlord should be compensated for some supplies, a portion of the repairs and part of the painting. I find that the amount justified for cleaning and repairs, including a pro-rated amount for the painting would be $500.00.

In regard to the claim for $79.01 for advertising, I find that advertising the unit for rent would have been a necessary cost at the end of the fixed term in September had the tenancy continued uninterrupted to its natural end. Awards for damages are intended to be restorative, meaning the award should place the applicant in the same financial position had the damage not occurred. I find that the landlord had to incur this cost earlier than he otherwise would have had to do, but the cost would have been the same as that paid in June/July 2010. Accordingly I find that this portion of the landlord's claim must be dismissed.

I find that I am not able to grant the landlord's request for compensation for the $50.00 reimbursement for a filing fee for a previous hearing and the $100.00 for administrative costs for preparing for this dispute resolution hearing. Accordingly the portion of the landlord's application relating to these claims must be dismissed.

The landlord has not provided proof of the claimed expenditure of $25.00 to replace a lost key fob. However I accept that this claim does have merit and find the landlord is

entitled to this amount. I also find it that the landlord is validly entitled to the $50.00 cost of filing this application.

Based on the evidence and testimony, I find that the landlord is entitled to total monetary compensation of $883.64 comprised of the $71.68 cost for carpet cleaning, $200.00 for the cost of paint and other supplies, $36.96 for the door purchase, $500.00 for cleaning, repairs, including a pro-rated amount for the painting, $25.00 to replace lost key fob, the $50.00 cost of filing this application.

I order that the landlord is entitled to retain $623.10 from the tenant's security deposit and interest in partial satisfaction of this claim and I grant a monetary order for the remainder of $260.54 against the tenant.

Conclusion

I hereby grant a monetary order to the tenant ordering the tenant to pay $260.54 to the landlord. This order must be served on the tenant and if unpaid, may be enforced through Small Claims 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: December 2010.

Dispute Resolution Officer