



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

Dispute Codes:

MNDC, MNSD, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord for \$525.00 monetary compensation for loss of rent and a request to retain the security deposit in partial satisfaction of the claim.

Both parties appeared and gave testimony during the conference call.

Issue(s) to be Decided

The issue to be determined, based on the testimony and evidence, is whether or not the landlord is entitled to monetary compensation for loss of rent.

Background and Evidence

The tenancy began in November 2009 with rent of \$1,050.00 and a security deposit of \$525.00. The tenancy ended on August 31, 2010. The landlord testified that the tenant left the unit in need of repair and the carpet had to be cleaned and this delayed re-rental. The monetary claim is for \$525.00 representing one-half a month rent lost. In support of the claim, the landlord submitted into evidence photographs showing 2 gauges in the floor, patched walls and dust behind the refrigerator. No other evidence was submitted by the landlord.

The landlord testified that although no move-in inspection was completed, the rental unit was in pristine condition when the tenancy began including brand new carpets and flooring. The landlord stated that this fact was noted in the tenancy agreement. A copy of the tenancy agreement was not submitted into evidence. The landlord stated that near the end of the tenancy the rental unit was shown to prospective renters and a new occupant was found to move in on September 1, 2010 after the tenant vacated. However, according to the landlord, due to the damage in the unit, the new tenancy could not start on September 1 because the renter refused to take possession until repairs were done. According to the landlord, the respondent tenant accepted responsibility for some of the damage and asked him to get estimates which took some time to do. The landlord testified that the tenant also addressed some of the landlord's concerns by completing repairs including patching and repainting a wall in one room

with paint in a colour that did not match the remainder of the room. The landlord testified that a loss of one-half a month was incurred because of the tenant and is seeking compensation of \$525.00 from the tenant.

The tenant testified that there were already some holes in the walls when the tenancy began. The tenant stated that a shelf she had put up was removed, the holes patched and the entire wall repainted to satisfy the landlord's concerns about the wall damage. The tenant categorized the chips and scratches in the floor surface as normal wear and tear. The tenant stated that the rental unit was left in a better condition than it was in when the tenant originally took possession. The tenant's position was that the security deposit of \$525.00 should be refunded.

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 the Act, the regulations or the 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 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 reasonable steps to mitigate or minimize the loss or damage

In this instance, the burden of proof is on the claimant, that being the landlord.

Section 37(2) of the Act 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 this instance, the landlord has alleged that the tenant left the unit damaged to the extent that the condition prohibited the new occupant from taking possession on September 1, 2010, while the tenant's position was that the unit was left in better condition than when the tenancy began. I find that the tenant's role in causing damages can normally be established by comparing the condition before the tenancy began with the condition of the unit after the tenancy ended. In other words, through the submission of completed copies of the move-in and move-out condition inspection reports featuring both party's signatures. I find that conflicting verbal testimony on the subject will not suffice to support a claim for damages.

Sections 23(3) and 35 of the Act for the move-in and move-out inspections state that the landlord must complete a condition inspection report in accordance with the regulations and both the landlord and tenant must sign the report, after which the landlord must give the tenant a copy in accordance with the regulations. Part 3 of the Regulation goes into significant detail about the specific obligations regarding how and when the Start-of-Tenancy and End-of-Tenancy Condition Inspection Reports must be conducted.

In this instance I find that neither a move-in condition inspection report nor move-out condition inspection report was completed. I find the failure to comply with these sections of the Act has hindered the landlord's claim for compensation preventing this monetary claim from satisfying element 2 of the test for damages.

In regard to satisfying element 3 of the test for damages, I find that the landlord failed to submit sufficient evidence confirming that the new tenancy was delayed by two weeks and evidence verifying that as a result, the landlord suffered a loss of \$525.00.

With respect to meeting element 4 of the test for damages which requires a claimant to take reasonable steps to mitigate the loss, I find that the landlord's allegation that all of the damage had to be rectified before the new tenancy could begin is without merit. I find that the unit could have possibly been occupied by a renter with a commitment from the landlord to promptly repair the damage to the walls and floor.

Given that all four elements of the test for damages have not been met, I find that the landlord's claim for damages must be dismissed and the security deposit must be refunded to the tenant forthwith.



Dispute Resolution Services

Page: 4

Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

Conclusion

I hereby grant a monetary order to the tenant pursuant to section 38 in the amount of \$525.00. 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 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: January, 2011.

Residential Tenancy Branch