



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

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 appeared but neither of the two co-tenants appeared.

The landlord testified that each tenant was separately served by registered mail, but one had to be sent to "general delivery" as the tenant refused to give his forwarding address for service. Canada Post returned the mail as undeliverable. Therefore, I find that this matter will only proceed against the respondent, "N.W." who was adequately served in accordance with the Act via registered mail addressed to her home address.

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 the tenancy began on February 2010 with current rent of \$1,050.00 and security and pet damage deposits totaling \$1,050.00 were paid. The tenancy ended on August 31, 2010 after the landlord obtained an Order of Possession.

A copy of the tenancy agreement was in evidence. The landlord testified that at the time the tenant left, rental arrears of \$20.00 were owed from March 2010 and the rental unit was left in a dirty, damaged state by the tenant. The landlord acknowledged that no move-in nor move-out condition inspection reports were done. However, according to the landlord, the unit was clean and in good repair at the start of the tenancy and the tenant was given \$100.00 to finish the cleaning after the move-in. The landlord pointed out evidence that confirmed that the stove had been newly purchased just prior to the tenancy but was left covered in a charred film. The landlord was claiming the following:

\$20.00 rental arrears

\$80.00 cost of towing the tenant's abandoned car

\$200.00 general cleaning costs

- \$100.00 for clean-up of the garage and disposal of used oil left by tenants
- \$120.00 for rubbish removal entailing two trips to the dump
- \$44.00 to replace glass in the door
- \$50.00 to replace a broken door handle
- \$200.00 to re-install carpeting in basement removed without permission
- \$150.00 for theft of approximately 30 established perennial plants from garden
- \$20.00 for purchase of a smoke alarm removed by tenants
- \$40.00 to trim neglected lawn

The total amount being claimed was \$1,074.00, plus the cost of filing and the claim was supported by a significant amount of evidence including copies of receipts, invoices, written testimony and photographs.

Analysis:

With respect 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 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 listed damages and losses, I find that the landlord's claim has successfully met each element of the test for damages. Given the above, I find that the landlord is entitled to retain the tenant's security deposit and pet damage deposit.

Conclusion

I hereby order that the landlord retain both the tenant's security deposit of \$525.00 and the tenant's pet-damage deposit of \$525.00 of \$1,050.00 in full satisfaction of the monetary claims made by the landlord, including the filing fee .

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