



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 rent owed, bank charges, cleaning, garbage removal and repairs and to keep the security deposit in partial satisfaction of the claim. The landlord appeared but despite being served by registered mail neither of the two co-tenants appeared.

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 rent owed and damages.

Background

The landlord testified that the tenancy began on November 1, 2009 and rent was \$1,250.00. A security deposit of \$625.00 was paid. The tenancy ended on August 31, 2010 after the landlord issued a Notice to End Tenancy. A copy of the tenancy agreement was in evidence.

The landlord testified that at the time the tenant left, rental arrears of \$1,250.00 for the month of August and NSF charges totaling \$50.00 were outstanding.

The landlord testified that after the tenant cancelled two different scheduled move-out condition inspections, the landlord offered the tenant a final opportunity for inspection. However, the tenant failed to respond and the landlord conducted the inspection in the tenant's absence. A copy of the move-in and move-out condition inspection report was in evidence.

According to the landlord, the unit was clean and in good repair at the start of the tenancy but was left in a dirty, unkempt condition. The landlord submitted photos of the damage into evidence that were also served on the tenants. The landlord was claiming the following:

\$1,2500.00 rental arrears

\$50.00 cost for two NSF cheques

\$650 00. general cleaning and garbage removal costs

\$150.00 carpet-cleaning costs

The total amount being claimed was \$2,100.00, plus the \$50.00 cost of filing and the claim was supported by a significant amount of evidence including copies of receipts, invoices, written communications and photographs.

Analysis:

Section 26 of the Act states that rent must be paid when it is due, under the tenancy agreement, whether or not the landlord complies with the Act, the regulations or the tenancy agreement. I find that the tenant did not pay the rent when rent was due and the landlord is entitled to \$1,2500.00 rental arrears and the \$50.00 cost for two NSF cheques.

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 was on 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.

In regard to the cleaning and repairs, I find that under section 32 of the Act 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 of the four elements of the test for damages. Given the above, I find that the landlord is entitled to a monetary order in the amount of \$2,150.00.

Conclusion

I order that the landlord retain the tenant's security deposit of \$625.00 as partial payment towards the money owed, leaving a balance of \$1,525.00 and hereby issue a monetary order for this amount. This order must be served on the tenant in accordance with the Act and if necessary can be enforced through Small Claims 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: January 2011.

Residential Tenancy Branch