



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes: MNSD, 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, utilities, cleaning, carpet shampooing, and yard work.

The landlord appeared but the tenant did not. The landlord testified that the tenant refused to provide a service address to send the Notice of Hearing by registered mail, so the tenant and a witness served the tenant in person at his place of employment on October 21, 2010. I accept that the tenant was served.

Issue(s) to be Decided

The issue 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 May 15, 2010 and rent was \$2,400.00. A security deposit of \$1,200.00 was paid. The tenancy ended on October 1, 2010 after the landlord issued a Ten-Day Notice to End Tenancy. A copy of the Ten Day Notice to End Tenancy and a copy of the tenancy agreement were in evidence.

The landlord testified that at the time the tenant left, rental arrears of \$2,400.00 were still owed for the month of September 2010. In addition, the landlord had also been billed for water utilities in the amount of \$153.30 left unpaid as the tenant had neglected to put the utility in the tenant's name as required.

The landlord testified that, after offering the tenant two dates for the move-out inspection and a final opportunity to inspect, the landlord conducted the move-out inspection in the tenant's absence. A copy of the move-in/move-out condition inspection report was in evidence. The report showed that the unit was clean and in good repair at the start of the tenancy but was apparently left in a dirty, unkempt condition.

The landlord stated that two people worked for 7 hours cleaning the unit and shampooing the carpet took 3 hours. The landlord is claiming \$120.00 and \$75.00 respectively.

The landlord testified that the tenant failed to maintain the lawn and gardens as required under the Act or agreement. The landlord testified that she had to hire a yard maintenance firm for \$128.80 to mow the lawn and also received a quote for \$2,800.00 to completely repair the neglected gardens and grounds. In addition to the above, the landlord received an invoice for \$735.00 from a professional yard maintenance contractor that the tenant had evidently hired. Copies of these invoices were in evidence. The total amount owed by the tenant, according to the landlord, is \$6,412.30, of which the landlord is claiming \$5,000.00.

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 \$2,400.00 rental arrears.

In regard to the \$153.30 for water utility charges, I find that no copies of these invoices were submitted into evidence. I find that the landlord had issued a second Ten Day Notice to End Tenancy for Unpaid Rent in October 2010 showing the claim for unpaid utilities. However, the tenant had already vacated by that time. Moreover, under section 46 of the Act utilities can be claimed as rental arrears 30 days after a written demand for payment has been issued to the tenant. Given the above, I find that the portion of the landlord's application claiming utilities must be dismissed.

With respect to the other claims, 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 carpet shampooing charges, I find that 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.

I find that the landlord's claims for \$120.00 for cleaning and \$75.00 for carpet cleaning successfully meet all 4 elements in the test for damages and therefore I find that the tenant is entitled to be compensated \$195.00.

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.

In this instance I find that basic upkeep of the lawn by keeping the grass mowed the grass is an expectation under section 32 when a tenant does not share the property with other rental units. I find that the landlord is entitled to compensation of \$128.80 for lawn cutting. However I find that the claim for the estimated yard repair pertained to gardening duties that were likely beyond what would be expected under the Act. I also find that the tenancy agreement did not contain an enforceable term in this tenancy agreement requiring the tenant to take care of specific tasks in maintaining the gardens and grounds. Moreover, the landlord had not yet incurred any monetary loss. Therefore I find that the portion of the landlord's application relating to the estimated yard repairs of \$2,800.00 must be dismissed.

With respect to the \$735.00 landscaping invoice from a company that was apparently hired by the tenant without the landlord's involvement or consent , I find that the landlord

is not required to pay this invoice because the work was contracted by the tenant directly and that this expense would be considered as tenant's responsibility to handle.

Based on the evidence and testimony, I find that the landlord is entitled to monetary compensation of \$2,773.80 comprised of \$2,400.00 for rental arrears, \$195.00 for general cleaning and carpet cleaning, \$128.80 paid for cutting the lawn and the \$50.00 cost of the application. I order that the landlord retain the security deposit of \$1,200.00 in partial satisfaction of the claim leaving a balance due of \$1,573.80.

During this proceeding the landlord made a request for an order permitting the landlord to serve the tenant by registered mail addressed to the tenant and sent to his place of employment. The landlord stated that the tenant was avoiding service by refusing to provide a forwarding address and the landlord was forced to deliver the Notice of Hearing in person to the tenant where he was working. The landlord stated that she was certain that registered mail addressed to the tenant would be received.

The Residential Tenancy Policy Guidelines indicate that where a landlord is serving a tenant by registered mail, the address for service must be where the tenant resides at the time of mailing, or the forwarding address provided by the tenant. (my emphasis)

"Registered Mail" includes any method of mail delivery provided by Canada Post for which confirmation of delivery to a named person is available. With respect to orders for substituted service, the Guideline also states:

An application for substituted service may be made at the time of filing the application or at a time after filing. The party who is applying for substituted service must be able to demonstrate the following two things:

- 1) that the party to be served cannot be served by any of the methods permitted under the Legislation, and
- 2) that the substituted service is likely to result in the party being served having actual knowledge of what is being served

I accept the landlord's testimony that the tenant may be avoiding service and find that the tenant was available for contact at his workplace address. Given that the tenant had already been successfully served in person at this address, I find it likely that registered mail addressed to this tenant sent to his place of employment would be received by the tenant.

Accordingly I hereby order that the Monetary Order may be served by registered mail sent care of the tenant using his employment address.

Conclusion

Based on the evidence and testimony presented during the hearing, I hereby grant the Landlord a monetary order under section 67 for \$1,573.80. 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.

I further order that order that the Notice of Hearing may be served by registered mail at the tenant's employment address

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