



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

Decision

Dispute Codes:

MNSD

Introduction

This Dispute Resolution hearing was set to deal with an Application by the landlord for a monetary order for loss of rent, compensation for damage to the unit and money owed or compensation for damage or loss under the Act. The landlord appeared and gave testimony.

Both parties appeared and gave testimony during the conference call.

Issue(s) to be Decided

The landlord was seeking a monetary order and to retain the security deposit for loss of rent due to inadequate notice to end tenancy, cost of repairing the walls and carpet cleaning in the amount of \$950.00.

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 damages or loss.

Background and Evidence

The landlord testified that the month-to-month tenancy began in March 2009 and ended around September 3, 2010 when the landlord discovered that the tenant had vacated. The landlord testified that the key was not returned until September 24, 2010 by mail. The rent was \$675.00 and damage deposit was \$337.50. No written tenancy agreement was in evidence and no move-in or move-out condition inspection reports were completed.

The landlord testified that on July 30, 2010 the tenant had given written notice to vacate effective August 31, 2010. A copy of the mutual agreement to end tenancy dated July 30, 2010 with termination date of August 31, 2010 was in evidence. According to the landlord, the tenant later approached him and verbally rescinded the notice given and

asked to remain in the suite for several more months, to which the landlord verbally agreed. However, when the landlord returned from a trip on September 3, 2010, he found the door of the empty unit ajar and the tenant gone. The landlord stated that due to the tenant's failure to give proper written notice to vacate as required under the Act, he was not able to re-rent the unit for September 2010 and lost a month rent in the amount of \$675.00.

The tenant did not agree that the written notice to vacate as of August 31, 2010 was ever verbally cancelled by the tenant and pointed out that she vacated according to schedule based on the mutual agreement to end tenancy. The tenant provided evidence in the form of an invoice from the movers verifying that the unit was vacated on September 1, 2010. The tenant also testified that she left the keys and a note with her forwarding address in the landlord's mailbox on the day she vacated. The tenant stated that she later mailed an additional key and a second copy of her forwarding address to the landlord on September 17, 2010. A copy of this communication was in evidence. The tenant disputed that the landlord's claim for loss of rent was justified.

The landlord testified that the tenant had left damages to some of the walls due to nails and a piece of wood fastened to the wall that had to be removed. The landlord testified that he spent approximately 10 hours patching, sanding, painting and cleaning up the damage and is claiming \$200.00 for this job.

The tenant disputed that she caused any significant damage to the walls and stated that only small finishing nails were used to hang things and the tenant also used some of the existing nails already in the wall.

The landlord testified that the tenant had not cleaned the carpet and this necessitated vacuuming the carpet and shampooing it, for which he is claiming \$75.00.

The tenant argued that she had vacuumed the 8-foot-by-12-foot area rug, but it did not need shampooing. The tenant disputes the claim.

Analysis

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.

With respect to the landlord's claim for loss of rent for September, I find that both parties agreed that they entered into a written contract to terminate the tenancy effective August 31, 2010. The document was in evidence and ending the tenancy this way was in compliance with section 44 of the Act.

The tenant denied the existence of a second verbal contract reinstating the tenancy. However, even if I accept that there *was* a second verbal agreement cancelling this earlier written contract which ended the tenancy, I find that a written contract cannot be overcome or taken back merely through a later verbal agreement, but would require a second *written agreement* to cancel the earlier written one signed by both parties. In addition, section 13 of the Act requires that a written tenancy agreement must be created by the landlord and signed by both parties in order to establish a tenancy between a landlord and a tenant.

I do not accept the landlord's position that a disputed non-compliant verbal agreement be accepted and enforced over a written contract that did fully comply with the Act. Accordingly I find that the portion of the landlord's application relating to the \$675.00 loss of rent for September must be dismissed.

With respect to the landlord's claim of \$200.00 for patching holes in the drywall, 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 while the tenant's position was that the unit was left in a comparable condition as when the tenancy began.

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 that the tenant's role in causing damage 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.

Given the above, I find that conflicting verbal testimony on the subject will not suffice to support a claim for damages. Therefore, I find that this claim does not sufficiently meet element 2 of the test for damages. Accordingly, this portion of the landlord's claim must be dismissed.

In regard to the claim made for carpet cleaning, based on the testimony of both parties, I find that the area rug was vacuumed but not steam-cleaned nor shampooed by the tenant at the end of the tenancy. Accordingly I find that the landlord is entitled to be compensated in the amount of \$30.00 for shampooing the carpet. This is based on 1.5 hours of labour at \$20.00 per hour.

Conclusion

Based on the testimony and evidence I find that the landlord is entitled to retain \$30.00 from the pet damage deposit of \$337.50 leaving a balance of \$307.50 in favour of the tenant. The remainder of the landlord's application is dismissed without leave.

I hereby grant a monetary order in favour of the tenant in the amount of \$307.50. This order must be served on the landlord and may be enforced through Small Claims if not paid.

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