

DECISION

Dispute Codes: MND, MNSD, FF

Introduction

This Dispute Resolution hearing was set to deal with an Application by the landlord for a monetary order for rent loss owed, compensation for damages to, and cleaning of, the unit and an order to keep the security deposit. Although served with the Application for Dispute Resolution and Notice of Hearing by registered mail sent on October 8, 2010, the tenant did not appear.

Issue(s) to be Decided

The issue to be determined based on the evidence is whether the landlord is entitled to compensation under section 67 of the *Act* for damages or loss of rent.

Background and Evidence

The landlord testified that the month-to-month tenancy began in On June 1, 2010 with rent set at \$1,150.00 and a deposit of \$575.00. The security deposit was reduced to \$525.00 in a previous hearing that awarded the landlord \$50.00 compensation to be retained from the deposit. No copies of the tenancy agreement or condition inspections were in evidence. The landlord testified that they received an Order of Possession on October 20, 2010 and the tenant did not attend on the scheduled day of the move-out inspection, has not responded to the landlord since and moved out by October 24, 2010. The landlord testified that the rental unit was in a deplorable condition with destruction of appliances, flooring, doors, cabinets, plumbing and large holes in the wall and submitted photos of the damage. The landlord testified that the stove, dishwasher, sink, window treatments and fixtures had to be replaced and provided invoices and receipts to verify the costs for the purchase of supplies and materials and for installations. The landlord testified that a contractor was hired to repair the walls, doors and cabinets and repaint the unit with invoices totaling \$5,070.00 for this labour alone. The landlord also spent 40 hours of cleaning and paid \$150.00 to have garbage hauled from the unit. The landlord testified that they are claiming \$5,000.00 representing only a portion of the expenditures that the landlord had been incurred. In addition to the above, because the application was made in October 2010, the landlord testified that a further

loss was also incurred because the unit was in too poor a condition to re-rent until the repairs were completed and the landlord is therefore claiming \$1,150.00 for loss of rent for the month of November. The total claim is \$6,150.00 plus the \$50.00 for filing.

Analysis

Claim for Cleaning and Repairs

Section 7(a) of the Act permits one party to claim compensation from the other for costs that result from a failure to comply with this Act, the regulations or their tenancy agreement. Section 67 of the Act grants a Dispute Resolution Officer the authority to determine the amount and to order payment under these circumstances.

I find that in order to justify payment of damages under section 67, the Applicant would be required to prove that the other party did not comply with the Act and that this non-compliance resulted in costs or losses to the Applicant. 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.

Section 32 of the Act requires that a tenant maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access and that *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*, except for any damage from reasonable wear and tear. 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 proven that the damage occurred and was caused by the tenants. In this regard, I find that the claims satisfy elements 1 and 2 of the test for damages. I find that the landlord's claim has satisfied element 3 of the test based on the documents submitted verifying that the claimed expenses were genuinely incurred. I also find that the claim met element 4 of the test of damages because the landlord mitigated the claim by reusing materials on hand wherever possible and did the cleaning themselves. Given the above, I find that the landlord has proven entitlement to compensation for cleaning and repairs in the amount of \$5,000.00 from the tenant.

Claim for Rent Owed

I find that the landlord's claim for loss of rent in the amount of \$1,150.00 for 2010 is supported by the evidence submitted by the landlord that proved the unit could not be re-rented during the month of November 2010 due to the ongoing repair work and I find that the landlord is entitled to an additional \$1,150.00 loss of rent.

Conclusion

Based on the testimony and evidence presented during these proceedings, I find that the landlord is entitled to total monetary compensation in the amount of \$6,200.00 comprised of \$1,150.00 for loss of rent, \$5,000.00 for the cost of cleaning and repairs and the \$50.00 fee paid by the landlord to file this application. I order that the landlord retain the \$security deposit and interest of \$525.00 in partial satisfaction of the claim leaving a balance due of \$5,675.00. I hereby grant the landlord a monetary order under section 67 of the *Act* for \$5,675.00. 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.

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: February 04, 2011.

Residential Tenancy Branch