



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

Decision

Dispute Codes: MNR, MND, MNDC, MNSD, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord for a monetary order for rent owed for the month of September 2010, late fee of \$20.00, cleaning costs of \$125.0, carpet cleaning of \$78.40, repair and haulage costs of \$100.00 and liquidated damages of \$300.00. The landlord was seeking to keep the security deposit in partial satisfaction of the claim.

Both parties appeared and gave testimony.

Issue(s) to be Decided

The issue to be determined, based on the testimony and evidence, is whether or not the landlord is entitled to monetary compensation for rental arrears owed and whether or not the landlord is entitled to monetary compensation for damages.

Background and Evidence

The tenancy began as a fixed term on July 1, 2010 and was to end on June 30, 2011. Rent was set at \$740.00 and according to the landlord and tenancy agreement, a security deposit of \$320.00 was paid. Submitted into evidence was a copy of the tenancy agreement, a move-in inspection report signed by the tenant, a move-out inspection report not signed by the tenant, a copy of the final ledger including rent and other charges, a copy of the security deposit receipt for \$367.50, and copies of invoices.

The landlord testified that the tenant failed to pay \$740.00 rent for September and gave notice to move. The landlord testified that the tenant suddenly vacated in mid-September leaving the unit dirty and with some damage. The landlord incurred costs of \$125.00 for cleaning, \$73.50 for carpet cleaning and \$100.00 for repairs and furniture removal. The landlord was also seeking late charges of \$20.00, liquidated damages of \$300.00 and the cost of filing the application.

Analysis

With respect to the rent owed for September 2010, I find that 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. In this instance I find that the tenant did not pay the rent for September which was to be paid when it was due.

Section 6 of the Act states that the rights, obligations and prohibitions established under the Act are enforceable between a landlord and tenant under a tenancy agreement and Section 58 of the Act states that, except as restricted under the Act, a person may make an application for dispute resolution in relation to a dispute with the person's landlord or tenant in respect of: (a) rights, obligations and prohibitions under this Act; (b) *rights and obligations under the terms of a tenancy agreement*. (My emphasis)

With respect to the \$20.00 late fee and the \$300.00 liquidated damages, I find that these are terms in the tenancy agreement that the tenant signed and the landlord is entitled to be compensated.

With respect to an applicant's right to claim damages from another party, section 7 of the Act provides that if a party fails to comply with the Act or agreement, the non-complying party must compensate the other for any damage or loss that results. 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 reasonable steps to mitigate or minimize the loss or damage

In regard to the claimed costs for cleaning and damages, 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. In establishing whether or not the tenant had complied with this requirement, I find that this can best be established with a comparison of the unit's condition when the tenancy began with the final condition of the unit after the tenancy ended. In other words, through the submission of move-in and move-out condition inspection reports containing both

party's signatures. Section 23(3) of the Act covering move-in inspections and section 35 of the Act for the move-out inspections places the obligation on the landlord to complete the condition inspection report in accordance with the regulations and both the landlord and tenant must sign the condition inspection report after which the landlord must give the tenant a copy of that report in accordance with the regulations.

In this instance, the landlord submitted a move-in condition inspection report that both parties had signed and a move-out condition inspection report that was unsigned by the tenant. Under the Act, a condition inspection report requires input from the two parties who have entered into the tenancy agreement.

Section 23(3) and section 35 both state that the landlord must offer the tenant at least 2 opportunities, as prescribed, for the inspection. Section 17 of the Regulation states:

- (1) A landlord must offer to a tenant a first opportunity to schedule the condition inspection by proposing one or more dates and times.
- (2) If the tenant is not available at a time offered under subsection (1),
 - (a) the tenant may propose an alternative time to the landlord, who must consider this time prior to acting under paragraph (b), and
 - (b) the landlord must propose a second opportunity, different from the opportunity described in subsection (1), to the tenant by providing the tenant with a notice in the approved form.
- (3) When providing each other with an opportunity to schedule a condition inspection, the landlord and tenant must consider any reasonable time limitations of the other party that are known and that affect that party's availability to attend the inspection.

Section 23(6) of the Act states that the landlord must make the inspection and complete and sign the report without the tenant if: (a) the landlord has complied with subsection (3), and; (b) the tenant does not participate on either occasion.

Both sections 25 and 35 which deal with the Start of Tenancy and the End of Tenancy Condition Inspection Report requirements contain similar provisions as outlined above.

In this instance, the landlord did not lead evidence as to whether or not the tenant was offered two opportunities as prescribed in section 17 of the Regulation and no copy of a notice of a final opportunity for inspection form was submitted. As the landlord completed the move out inspection without the tenant present, I find that this has affected the evidentiary weight of the inspection document. Given the landlord's inability to prove the end-of-tenancy condition, I find that the landlord's claims for the

cleaning costs, carpet cleaning costs and repairs do not sufficiently meet the test for damages and this portion of the application must therefore be dismissed.

I find that the landlord has established a total monetary claim of \$1,110.00 comprised of \$740.00 rent owed, \$20.00 late fees, \$300.00 liquidated damages and the \$50.00 fee paid by the landlord for this application. I order that the landlord retain the security deposit of \$367.50 in partial satisfaction of the claim leaving a balance due of \$742.50.

Conclusion

I hereby grant the Landlord an order under section 67 for \$742.50. 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. The remainder of the landlord's application is dismissed without leave.

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 2011.

Residential Tenancy Branch