

DECISION

Dispute Codes:

MNDC, MND, MNSD, FF

Introduction

This Dispute Resolution hearing was set to deal with an Application by the landlord for a monetary order for repairs, cleaning, money owed and compensation for damage or loss under the Act.

The landlord appeared but the tenant did not appear.

Preliminary Issue

The landlord testified that the tenant had not given a forwarding address for service and did not respond to email or telephone messages requesting the tenant's address.

Section 89 of the Act states that an application for dispute resolution or a decision of the director to proceed with a review under Division 2 of Part 5, must be given to one party by another, in one of the following ways:

- (a) by leaving a copy with the person;
- (b) if the person is a landlord, by leaving a copy with an agent of the landlord;
- (c) by sending a copy by registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord;
- (d) if the person is a tenant, by sending a copy by registered mail to a forwarding address provided by the tenant;
- (e) as ordered by the director under section 71 (1) *[director's orders: delivery and service of documents]*.

The landlord stated that after making the application for dispute resolution on October 19, 2010, and making fruitless attempts to obtain the tenant's residential address, it became clear that the tenant was intentionally avoiding service. However, the landlord was given the address of the tenant's place of business and the landlord attended this

location to personally serve the tenant with the notice of hearing in front of a witness. The landlord stated that he visually confirmed that the tenant was actually present at this address and approached him with the documents but the tenant refused to accept the package. The landlord stated that he subsequently sent the Notice of Hearing and evidence package by registered mail addressed to the tenant at the place of business. The landlord provided documented verification of the Canada Post tracking number showing that the package was mailed on October 22, 2010 and was successfully delivered on October 25, 2010.

Given the above, I find that the tenant was adequately served with the Notice of hearing and the landlord's evidence.

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 damages.

Background

The landlord testified that a tenancy began on September 15, 2008 with rent of \$1,250.00 and a deposit of \$400.00 was paid. The landlord testified that, although the tenant gave written notice to vacate by November 1, 2008, the tenancy finally ended December 2, 2008. The landlord testified that no written tenancy agreement was created but the tenant was given a copy of the strata bylaws in a binder. The landlord testified that, although no move-in condition inspection report was completed, the unit was brand new and in pristine condition when the tenant took occupancy. However, at the end of the tenancy significant damage was left and the landlord was claiming compensation. The landlord supplied photos, copies of communications and invoices to support the claims.

In addition to the costs incurred to rectify damage left after the tenancy ended, the landlord testified that the tenants had incurred fines from the strata council for smoking, noise and littering.

The landlord was claiming the following:

- \$238.50 for professional cleaning
- \$150.00 for additional cleaning by the landlord
- \$39.18 for wall repair supplies
- \$460.00 labour costs for wall repairs
- \$5,516.12 for replacement of the wood flooring

\$100.00 for storage of flooring materials
\$1,500.00 for replacement carpet
\$33.55 for replacement lighting
\$181.77 cost of paint
\$1,000.00 labour costs for painting
\$63.63 for replacement key fob and batteries
\$200.00 for scratches to the stove
\$22.40 for the fireplace remote
\$23.92 for miscellaneous supplies
\$1,400.00 for strata bylaw fines
\$712.00 for the costs caused by the tenant's over-holding of the unit
\$47.90 to copy and prepare the evidence
\$100.00 for the cost of the application

The total amount being claimed was \$11,733.97

The landlord testified that, despite being given the strata bylaws and being warned repeatedly, the tenant persisted in smoking on the balcony, dumping ashes off the balcony and causing excessive noise incurring \$1,400.00 in fines that the landlord was required to pay to the strata.

The landlord testified that at the end of the tenancy, the walls were left cracked and punctured and had to be patched and repainted. The tenant had also stained and burned the carpet. The landlord testified that no effort was made to clean or repair the carpet as an expert had advised that the carpeting had to be replaced. In addition, the tenant had scratched, gouged, pitted and burned the wood flooring. The landlord supplied a photo to confirm the damage. According to the landlord, a flooring expert had assessed the damage and concluded that the flooring would have to be completely replaced. Other damage included a missing light shade requiring a new fixture, serious scratches on the stove, lost and broken remotes for the garage and fireplace and miscellaneous destruction in the unit.

The landlord testified that, because the tenant remained in the unit until past the end of November instead of moving out in accordance with their written notice, the landlord was forced to delay the closing of the sale on the rental unit and this added costs of \$712.00 which is also being claimed.

The landlord is seeking a monetary order to compensate for the above costs.

Analysis:

In regard 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 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. Once that has been established, the claimant must then provide evidence to verify the actual monetary amount of the loss or damage and finally must show that a reasonable attempt was made to mitigate the damage or losses incurred.

In regard to the cleaning and repairs, I find that section 32 of the Act requires that 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.

I find that the tenant did not comply with section 37 of the Act and this violation resulted in a loss.

Based on the evidence and testimony, I find that the following claims have met the test for damages and the landlord is entitled to full compensation of \$238.50 for professional cleaning, \$150.00 for additional cleaning by the landlord, \$39.18 for wall repair supplies, \$460.00 labour costs for wall repairs, \$33.55 for replacement lighting, \$181.77 cost of paint, \$63.63 for replacement key fob and batteries, \$200.00 for scratches to the stove, \$22.40 for the fireplace remote, \$23.92 for miscellaneous supplies.

Based on the evidence and testimony, I find that the landlord is entitled to partial compensation of \$2,000.00 towards replacement of the wood flooring and \$100.00 for storage of flooring materials. I also find that the landlord is entitled to \$1,400.00 reimbursement for the strata bylaw fines, \$712.00 for the extra costs caused by the tenant's over-holding of the unit and \$100.00 for the cost of the application.

I find that the claims of \$1,500.00 for replacement carpet and the \$1,000.00 labour costs for painting do not sufficiently meet the test for damages and loss and must be dismissed.

Accordingly I find that the landlord is entitled to total monetary compensation of \$5,724.95. I order that the landlord retain the security deposit of \$400.00 in partial satisfaction of the claim and issue a monetary order for \$5,324.95 including the cost of filing the application.

Conclusion

I hereby issue a monetary order in favour of the landlord in the amount of \$5,324.95. This order must be served on the tenant and if unpaid can be enforced through Small Claims 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