



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

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

Introduction

This Dispute Resolution hearing was set to deal with an Application by the landlord for a monetary order for rent owed, cleaning, and repairs and to keep the security deposit in partial satisfaction of the claim.

The landlord appeared but neither of the two co-tenants appeared.

Preliminary Matter

The landlord testified that she had attempted to serve each of the two co-tenants separately by registered mail, but only succeeded in locating and confirming the residence of the male tenant.

Sections 88 and 89 of the Act determine the method of service for documents. The landlord has applied for a Monetary Order which requires that the landlord serve each one of the tenants as set out under Section 89(1). Tenants are jointly and severally responsible for the payment of rent under a tenancy agreement, but in this case, only one tenant had been successfully served with the hearing documents. As the landlord has not sufficiently proven service of the Notice of Hearing upon the other co-tenant, the landlord's monetary claim can only proceed against the tenant who was verified as having been properly served with the Notice of Hearing and the 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 rent owed and damages.

Background

The landlord testified that the tenancy began in August 2010 and rent was \$1,700.00. A security deposit of \$850.00 was paid. The tenancy ended in January 2011 when the landlord found out that the tenant had moved without notice.

The landlord testified that the tenant had not paid rent for December 2010 nor January, 2011 and the landlord is claiming rent for these two months. The landlord testified that a move-in condition inspection had been done at the start of the tenancy, but it was not possible to do a move-out inspection with the tenant because the tenant had abandoned the suite and, when contacted by telephone, refused to return for the inspection.

The landlord testified that the rental unit was left in an unclean and damaged state as the tenant had been smoking in the unit which was not permitted under the tenancy agreement. A copy of the tenancy agreement was in evidence.

The landlord testified that the walls had been painted approximately 1 ½ years prior to the tenancy. The landlord testified that the unit required patching and repainting of the walls, carpet cleaning, window cleaning, screen repairs, drapery cleaning, general cleaning and the tenant also left unpaid water bills. In addition to the \$3,400 rent owed for December and January, the landlord is seeking \$82.35 for the unpaid utilities and \$1,700.00 for loss of rent for the month of February 2011 due to the fact that the unit was still under repair and not in a rentable state. Other claims sought by the landlord are as follows:

- \$368.50 Paint and associated supplies purchased
- \$170.30 Carpet cleaning cost in past (prior to tenancy)
- \$93.00 Patching of walls
- \$110.00 Window Interior & exterior cleaning and and screen repairs
- \$50.00 Drapery cleaning 2.5 hours
- \$24.64 Estimated cleaning cost for drapes
- \$160.00 General Cleaning 8 hours @ \$20.00/hr.
- \$60.00 Preparation for painting by landlord @ \$20.00/hr
- \$760.00 Painting & preparation done by landlord @ \$20.00/hr.
- \$60.00 Preparation for painting @ \$20.00/hr

Each one of the above claims was supported by an invoice or statement placed in evidence. The landlord also submitted estimated costs of \$750.00 for additional painting that has not yet been done and \$400.00 for additional paint that has not yet been purchased. Finally, the landlord was seeking reimbursement for the \$100.00 cost of filing, \$19.64 for postage and \$57.67 for photos.

The total amount being claimed was \$8,376.10.

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 \$3,400 rent owed for December and January and \$82.35 for unpaid utilities.

With respect 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 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 repairs, I find that under section 37(2) of the Act, 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 Move-in inspection report indicated that there were some minor pre-existing condition issues at the start of the tenancy.

Awards for damages are intended to be restorative, meaning the award should place the applicant in the same financial position had the damage not occurred. Where an item has a limited useful life, it is necessary to take into account the age of the damaged item and reduce the replacement cost to reflect the depreciation of the original value. In

order to estimate depreciation of the replaced item, reference can be made to Residential Tenancy Policy Guideline 37 in order to accurately assess what the normal useful life of a particular item or finish in the home would be. I find that the average useful life for paint is set at 4 years. In this instance I find that the paint finish had already reached the mid-point of its expected life.

With regard to the charges for labour, I find that the hourly charge for the landlord's time, would be set at \$15.00 per hour.

The landlord engaged in repair work as soon as the tenancy ended and had submitted a number of work sheets showing time spent on cleaning and repairs. However, I find that many of the documents detailing the breakdown of labour tasks and the amount of time spent on each neglected to indicate the dates that the work was actually performed. In addition, some of the charges were based on estimates for future work that has not been done and purchases that have not yet been made.

Based on the above, I find that the landlord is entitled to \$184.25 pro-rated amount for the paint and associated supplies, \$135.00 for 9 hours spent in cleaning the carpet, \$93.00 for patching of walls, \$70.00 for screen repairs and window cleaning, (interior only), \$37.50 for time spent on drapery cleaning, \$120.00 for 8 hours of general cleaning, \$45.00 for preparation for painting and \$285.00 for painting and preparation done by the landlord. The total for the above is \$969.75.

With regard to estimated costs of \$750.00 for the future painting work, \$400.00 for paint that has not yet been purchased, and \$24.64 estimated cleaning cost for drapes,. I find that these expenditures have not been incurred and therefore the claim for them must be dismissed.

With respect to the claimed loss of rent for the month of February 2011, I find that to meet element 4 of the test for damages including loss of rent, there is an expectation that the landlord would minimize the losses by getting the rental suite cleaned and ready for re-rental as quickly as possible. I find that the preparation of this unit is still in progress. The fact that the landlord has a limited amount of time to dedicate to preparing the unit does relieve her from the obligation to mitigate under section 7(2) of the Act. Moreover, a portion of the painting to be done was attributable to normal wear and tear. I find that the landlord would not be entitled to be compensated for loss of rent beyond January and dismiss the claim for \$1,700.00 rent loss for February.

The claims for \$19.64 for postage and \$57.67 for photos are expenditures that would not qualify for compensation under the Act. The landlord is, however, entitled to the \$100.00 cost of filing.

The total monetary compensation for the landlord is \$4,552.10 comprised of \$3,400.00 for rent owed, \$82.35 for utilities, \$969.75 for cleaning, painting and repairs and the \$100.00 cost of filing the application.

Conclusion

I order that the landlord retain the tenant's security deposit of \$850.00 as partial payment towards the money owed, leaving a balance of \$3,702.10 and hereby issue a monetary order for this amount. This order must be served on the tenant in accordance with the Act and if necessary 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: March 2011.

Residential Tenancy Branch