



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

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 December 17, 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 fixed term tenancy began in On June 14, 2010 and was to run for 9 months until March 14, 2011. The rent was set at \$1,800.00 due on the 14th of each month and a deposit of \$900.00 was paid. The security deposit held in trust on behalf of the tenant was reduced to \$850.00 in a previous hearing held on November 9, 2010, that awarded the landlord \$50.00 compensation to be retained from the security deposit. A copy of the tenancy agreement, condition inspection reports, communications, invoices, copies of advertisements and photos were in evidence.

The landlord testified that, instead of the tenant's elderly parent moving into the unit as the parties had discussed and agreed-upon, the tenant had permitted other relatives to move in. The landlord testified that because of the conduct of these other occupants, fines of \$350.00 had been imposed by the Strata Council and the landlord is claiming compensation for these costs.

The landlord testified that the tenant moved out on November 30, 2010 still owing a half a month's rent in the amount of \$900.00, which is being claimed. The landlord testified that she was not able to re-rent the unit, despite advertising it and incurred a further loss of \$1,800 in rent for December.

The landlord testified that the tenant did not attend on the scheduled day of the move-out inspection and did not respond to the Notice of Final Opportunity to Schedule an Inspection dated November 30, 2010. The landlord testified that when the tenant vacated the unit was left in a unit was in a deplorable condition and is claiming the following:

- \$120.00 for repainting of affected rooms
- \$18.57 for gloves
- \$6.99 for filter to the kitchen hood
- \$2.99 for oven cleaner
- \$4.99 for wood filler for window frame damage
- \$15.00 labour to repair the window frame
- \$1.98 for missing dimmer knob
- \$60.00 for closet door re-alignment
- \$9.99 for missing pop-up rod to basin
- \$21.99 for a missing paper holder
- \$500.00 for damaged blinds
- \$29.99 to replace stained toilet seat
- \$23.48 for damaged toilet tank parts
- \$30.00 to replace chips in the laminate
- \$400.00 to replace stained carpet
- \$80.00 for damage to entry door
- plus the \$50.00 for filing the application.

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 this Act, the regulations or the tenancy agreement. I find that the tenant failed to pay half of the rent from November 14 to November 30, 2010 and the landlord is entitled to be compensated \$900.00.

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. (My emphasis)

With respect to the claim for loss of rent for the month of December and the fines from The strata council, I find that these two claims have met the test for damages and the landlord is entitled to be compensated in the amount of \$1,800.00 and \$350.00.

With respect to the repairs to the unit, I find that 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.

While I accept that there were costs incurred due to damage, I find that the landlord is not entitled to be compensated for the patching of picture holes and repainting of the unit, the estimated cost of the closet door re-alignment, the missing dimmer knob, the

new filter for the kitchen fan, the toilet tank parts, repairs to the laminate counter, repairs to the window sill, and repairs to the entry door and the cost of the gloves. I find these deficiencies were not sufficiently proven by the landlord to be due to factors other than wear and tear and element 2 of the test for damages has not been adequately met. I find that these claims must therefore be dismissed.

With respect to the stained carpeting, I find that the landlord's claim that she attempted to have this spot professionally cleaned was not supported by evidence proving that a reasonable attempt was made to mitigate the damage. I find that this claim fails element 4 of the test for damages and must be dismissed.

I find that the blinds, which were purchased in 1994, had reached the end their expected useful life, which is ten years and therefore the pro-rated value would be nil.

I find that the landlord is entitled to be compensated \$2.99 the for oven cleaner, \$5.00 for the pro-rated value of the missing pop-up rod to the basin, \$10.50 for the used value of a paper-holder and \$15.00 for the used value of the toilet seat.

Given the above, I find that the landlord has proven entitlement to compensation of \$3,133.49, comprised of rent owed of \$900.00, \$1,800.00 loss of rent, \$350.00 for fines levied by the strata council and \$33.49 for cleaning and repairs and \$50.00 for the cost of the application.

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 \$3,133.49 and I order that the landlord retain the remaining \$850.00 left of the security deposit in partial satisfaction of the claim leaving a balance due of \$2,283.49. I hereby grant the landlord a monetary order under section 67 of the *Act* for \$2,283.49. 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: April 2011.

Residential Tenancy Branch