

DECISION

Dispute Codes: MNDC, MND, MNR, FF

Introduction

This Dispute Resolution hearing was set to deal with an Application by the landlord for a monetary order for past rent owed, the cost of repairs, cleaning, and disposal of items left after the tenancy.

Both parties appeared and gave testimony during the conference call.

Preliminary Issue

This hearing was adjourned from March 29, 2011 in order to permit service of some evidence between the parties. This evidence was already on file with the Residential Tenancy Branch, (RTB) and the parties were specifically instructed that, except for the exchange of this particular evidence, no other new evidence would be accepted at the RTB for the reconvened hearing.

Accordingly the additional evidence that had arrived after March 29, 2011, when the hearing was in mid-process was not considered. However the parties were given opportunity to provide verbal testimony with respect to their 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 and past rent owed.

Background

The landlord testified that a fixed-term tenancy began on February 1, 2010 and was to expire and convert to month-to-month on January 31, 2011. The rent was \$1,175.00 and a security deposit of \$587.50 was paid. The landlord testified that, when the tenant failed to pay rent for December 2010, a Ten Day Notice to End Tenancy for Unpaid Rent was issued.

There was a previous dispute resolution decision dated December 21, 2010 stemming from the landlord's application for a direct request in which the landlord was successful

in being granted an order of possession effective two days after service and a monetary order for \$1,175.00 for rent owed for the month of December 2010.

However, according to the landlord, the tenant had already vacated the unit sometime in the first week of December 2010, prior to ever being served with the Order of Possession. The landlord stated that on December 13, 2010, he confirmed with another resident in the complex that the tenant had finished moving out and had abandoned the remaining items in the unit and the landlord felt that it was necessary for security reasons to change the locks on December 14, 2010. The landlord stated that when the tenant contacted him with concerns about his action in changing the locks, the parties signed an agreement granting the tenant two days access to finish moving and cleaning. A copy of the signed agreement dated December 18, 2010 was in evidence. The landlord stated that even after being granted full access, the tenant did not show up for the second day and left refuse for the landlord to deal with.

The landlord gave verbal testimony that, when the tenant vacated, the unit was left in an unclean and damaged condition. The landlord stated that no move-in nor move-out condition inspection reports were done. The landlord explained that the tenant was not willing to cooperate in the move-in inspection process and had merely abandoned the unit, preventing him from arranging a move-out condition inspection.

The landlord called a witness regarding the state of the residence and the witness testified that, during the tenant's occupancy, the unit was not kept very clean, particularly the carpets. The witness could not confirm the condition of the rental unit at the time the tenant had moved in, but testified that the unit was left in a mess when the tenant vacated.

The landlord was seeking compensation for cleaning, repairs, time spent hauling discarded items, supplies, locks, replacement flooring and money owed for issues that arose during the tenancy such as service calls for pest control and appliance maintenance.

The landlord was claiming the following compensation:

- \$1,000.00 for rent arrears dating back to the month of February 2010
- \$400.00 for failing meet the agreement for yard clean-up in lieu of rent
- \$492.60 for bedbug pest-control services
- \$67.20 to reimburse for an unnecessary washing machine service call.
- \$1,357.71 to replace flooring flooded by tap improperly installed by tenant
- \$25.00 and \$49.19 for rug shampoo and rental of carpet cleaning machine
- \$20.15 and \$12.00 for flea spray and light bulbs

\$49.27 for replacement deadbolt lock

\$612.50 for 24.5 hours of labour at \$25.00 per hour

\$100.00 for the cost of the application

The total amount of the landlord's claim, based on the above was \$4,185.62.

The landlord testified that, when the tenancy started in February 2010, there was a verbal agreement that the tenant would be permitted to move in ten days early in exchange for cleaning up pre-existing debris in the yard. According to the landlord, the tenant did not finish this job and the landlord now feels entitled to recoup prorated rent for the ten-day period in the amount of \$400.00. The landlord also alleged that the tenant had neglected to fully pay all of the rent owed for September 2010 and was issued a Ten Day Notice to End Tenancy for Unpaid Rent at that time, which the landlord apparently neglected to pursue. The landlord was seeking \$1,000.00 in arrears.

The tenant disputed all of the above claims. The tenant denied owing any unpaid rent for September 2010 and denied not fulfilling the agreement to tidy up the yard in lieu of early-move in. The tenant pointed out that the landlord had never brought up any claims for either of these alleged debts before now. The tenant also testified that the yard work was extremely difficult and some of the items that the landlord took issue with were not part of the tenant's responsibility to remove under that verbal contract.

The tenant challenged the landlord's allegation that they had been responsible for bringing in bedbugs or fleas. With respect to the washing machine, the tenant denied any misuse of the machine and stated that the appliance did have a problem, which was duly reported to the landlord. With respect to the flooded flooring, the tenant's position was that this was due to a plumbing issue left to the tenant to take care of, with the prior knowledge and consent of the landlord. The tenant pointed out that the landlord had later re-rented the unit with the existing flooring. The tenant stated that all but one area of the carpeting was steam cleaned by the tenant in the final clean-up and that the carpets were never in pristine condition when they took possession. The tenant stated that they did not remove light bulbs nor leave any burned-out lights. The tenant's position with respect to the deadbolt was that a landlord is responsible under the Act for changing the locks between each tenancy. Moreover, according to the tenant, the landlord had had no legal right to change the lock and restrict access, on December 14, 2010, in the first place. The tenant stated that it was abundantly clear that the unit had not been abandoned and that the landlord's illegal actions served to prohibit the tenant from properly cleaning and removing all of the possessions from the unit. The tenant stated that the landlord's conduct had prompted them to seek police intervention. The tenant testified that the landlord's claim was not based on any valid losses for which the tenant should validly be held liable under the Act.

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.

Based on the evidence, I find that the landlord did not submit sufficient evidentiary proof that, on a balance of probability, the tenant was \$1,000.00 in arrears with rent from September 2010. I accept the landlord's testimony that a Ten Day Notice to End Tenancy for Unpaid Rent had been issued at the time, but the landlord was not able to explain why he had never followed up on this alleged failure to pay rent owed the subsequent months of the tenancy.

With respect to the ancillary verbal agreement between these parties pertaining to early move-in , the yard clean-up, and the \$400.00 claim by the landlord, I find that the verbal contract that created the rights and obligations was not sufficiently clear to enable me to me to accurately interpret the terms after-the-fact.

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. Based on the evidence, I am unable to find that the tenant did not comply with section 37 of the Act. The fact that there was no move-in or move-out condition inspection reports made it impossible to clearly establish the before-and-after state of the rental unit. In any case, I accept the tenant's testimony that, by interfering with the tenant's move-out process necessitating police involvement, the landlord contributed to the tenant's failure to rectify the deficiencies.

With respect to pest control, appliance or plumbing repair or changing the locks, I find that these responsibilities fall to the landlord under the Act and regulations.

Based on the evidence and testimony, I find that none of the landlord's claims successfully met all of the elements to satisfy the test for damages. Accordingly, I find that the landlord's application must be dismissed.

Conclusion

In light of the above, I hereby dismiss the landlord's application in its entirety without leave to reapply.

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 26, 2011.

Residential Tenancy Branch