



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

Decision

Dispute Codes: MNSD, FF

Introduction

This Dispute Resolution hearing was set to deal with an Application by the landlord for compensation from the tenant for painting, general cleaning, carpet-cleaning, debris removal and loss of rent in the amount of \$2,525.00 .00 and to retain a portion of the security deposit in partial satisfaction of the claim.

Both parties appeared and gave testimony during the conference call.

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 or loss.

Background and Evidence

The landlord testified that the tenancy began in March 2010 and ended on November 30, 2010 \$875.00 per month. The security damage was \$440.00 and pet damage deposit was \$437.50. The tenant had provided the forwarding address on November 30, 2010 and the landlord made application to retain the deposit on December 15, 2010.

Submitted into evidence was a summary of the claim showing that the landlord sought compensation for the landlord's costs of \$4,451.52. Also in evidence in support of the claim was a copy of the tenancy agreement, a copy of the move-in and move-out condition inspection reports, a large number of photographs and invoices. The landlord stated that, although the move-out inspection report failed to contain notations of the damage now being claimed, this was due to the fact that the extent of the damage and lack of cleanliness was not discovered by the landlord until he took a closer look the following morning after the walk-through had already been completed. The landlord testified that the amount of work required to clean and repaint the 800 square-foot unit after the tenant had left required 41.5 hours and the landlord is seeking compensation at the rate of \$60.00 per hour for labour costs totalling \$2,490.00. Also being claimed was carpet-cleaning and scotch-guard treatment cost of \$198.18, furnace duct cleaning

costs of \$247.50, pressure-washer rental of \$59.14, cleaning supplies of \$36.32, painting supplies of \$468.42 and \$875.00 for lost rent for December 2010. The landlord stated that the unit had been freshly painted prior to the tenancy but was contaminated by smoke, despite having a clear term in the tenancy agreement prohibiting any smoking on the premises. The landlord stated that the smell of the unit made it difficult to find a new tenant and there was also a delay in re-renting caused by the amount of work necessary which took quite some time.

The tenant testified that she disagreed with all of the landlord's claims except for carpet-cleaning and some minor clean-up outside, the total cost of which the tenant estimated would be between \$100.00 and \$200.00. The tenant stated that the landlord had agreed to provide her with estimates for the carpet-cleaning, but did not follow-up. The tenant testified that she had engaged a professional cleaner and the unit was left in a clean condition except for the items above. The tenant pointed out that the claims put forth by the landlord at the hearing were never previously brought up during the move-out condition inspection and the report does not reflect the allegations being made by the landlord. The tenant denied smoking in the house and disputed that the unit had been freshly painted just prior to her taking possession. The tenant submitted written witness testimony into evidence confirming that the rental unit was left in reasonably clean condition at the end of the tenancy.

Analysis

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 tenant 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 the claimant took steps pursuant to section 7(2) of the Act minimize the loss.

The burden of proof is on the claimant, that being the landlord.

Section 37(2) of the Act states that, when a tenant vacates a rental unit, the tenant must leave it reasonably clean, and undamaged except for reasonable wear and tear.

I accept that the parties participated in move-in and move-out condition inspections and signed the reports in accordance with the Act. I find that the tenant was entitled to rely on the data contained in the move-out condition inspection report. With respect to the plethora of deficiencies that the landlord alleged were not discovered until after the inspection was already completed, I find that the evidentiary weight of these later claims was affected by the fact that they were missed during the move-out inspection. A tenant has the right to review issues raised during the condition inspection and must be given an opportunity to respond to or rectify any valid condition issues that are brought forth at the time. Therefore, I am not prepared to accept any of the claims relating to condition issues that the landlord had failed to raise through due diligence during the move out inspection.

In this instance, I find that the tenant did not comply with section 37 of the Act with respect to ensuring that all dog droppings left in the yard were cleaned up and that the final carpet-cleaning was completed. I therefore find that the landlord is entitled to \$115.00 for the basic carpet-cleaning costs and \$50.00, to clean up the dog droppings, representing two hours of labour valued at \$25.00 per hour.

I find that the remainder of the landlord's claims fail to satisfy all elements of the test for damages and must be dismissed.

Conclusion

Based on the testimony and evidence I find that the landlord is entitled to be compensated \$190.00 comprised of \$115.00 for the carpet-cleaning, \$50.00 for yard clean-up and half of the cost of the application in the amount of \$25.00. I order that this amount be retained from the \$877.50 security and pet-damage deposits being held on behalf of the tenant, leaving a balance of \$687.50 credit to the tenant. I hereby grant a monetary order in the amount of \$687.50 to the tenant. This order must be served on the landlord and may be enforced in small claims court if necessary.

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: April 2011.

Residential Tenancy Branch