



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNR, FF

Introduction

This hearing dealt with the landlord's Application for Dispute Resolution seeking a monetary order.

The hearing was conducted via teleconference and was attended by the landlord's agent and the tenant.

Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to a monetary order for unpaid rent; for damages and cleaning; and to recover the filing fee from the tenant for the cost of the Application for Dispute Resolution, pursuant to Sections 26, 37, 67, and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The parties agree the tenancy began on November 2008 as a month to month for rent of \$850.00 due on the 1st of the month and that the tenancy ended sometime in November 2010 after the landlord issued a 10 Day Notice to End Tenancy for Unpaid Rent.

The landlord seeks unpaid rent in the amount of \$4,250.00.

The landlord provided a tenant ledger showing that the tenant had paid rent in the amount of \$5,950.00 for the period January 2010 to November 2010. In the hearing, it was determined that the total rent that should have been paid was \$9,350.00 leaving a balance owing of \$3,400.00.

The tenant testified that he stopped paying rent in April 2010 because the landlord had not made some repairs he had requested such as replacement of the water heater or trimming of a hedge that the tenant had received complaints from the hydro electric provider.

The landlord's agent pointed out that the tenant had paid some rent throughout the year and there were often payments for more than the rent due to rent debt from the previous year.

The landlord is also seeking \$750.00 for cleaning; replacement bathroom sink and water damage. The landlord provided photographic evidence of the condition of the interior of the rental unit at the end of the tenancy, including the bathroom without a sink and garbage and debris strewn about the unit.

The tenant testified that the rental unit did not have a bathroom sink when he moved in and that he had installed a laundry sink on his and removed it as it was too big for the space. The tenant also acknowledged that he came back to help the landlord clean and worked with him for 3 hours.

The landlord's agent testified that he and 4 volunteers cleaned for 12 hours and another 14 volunteers cleaned for 6 hours. The landlord included cleaning inside and out of the rental unit. However, the tenant asserts that there was substantial garbage in sheds and on the property when he moved into the rental unit.

The landlord provided no evidence of the condition of the rental unit at the start of the tenancy specifically regarding the presence of a bathroom sink or the condition for which he is now claiming water damage to or the cleanliness of the house and yard.

Analysis

Section 26 of the *Act* requires a tenant to pay rent when it is due under the tenancy agreement whether or not the landlord complies with the *Act* unless the tenant has the right under the *Act* to deduct all or a portion of the rent.

As the tenant has indicated that he did not pay the rent because the landlord had failed to make repairs Section 32 and 33 of the *Act* must be considered. Section 32 speaks specifically to who has responsibility (the landlord or tenant) to make repairs in general but does not allow the tenant to withhold rent for repairs not made.

Section 32 outlines what a tenant may do in relation to emergency repairs. For repairs that are urgent that must be made to repair major leaks in pipes or the roof; damaged or blocked water or sewer pipes or plumbing fixtures; primary heating system; damaged or defective locks; or the electrical system the landlord must provide the tenant with emergency contact information.

The Section allows the tenant to make repairs if they are need; the tenant has made at least 2 attempts to contact the landlord for emergency repairs; and the tenant has given the landlord a reasonable time to make the repairs. In such cases the landlord must reimburse the tenant for any costs associated with the repairs if the tenant claims reimbursement and gives the landlord a written account of the emergency repairs accompanied by receipts for the amount claimed.

If the landlord does not make repairs in accordance with Section 32 or reimburse the tenant for emergency repairs the tenant has made under Section 33, the tenant may file an Application for Dispute Resolution to seek remedies, but at no time does the *Act* allow for the tenant to withhold rent unilaterally if repairs are not made.

As a result, I find the tenant owes the landlord full rent for the duration of the tenancy. As the tenant did not dispute the value of the rent claimed by the landlord, I accept that the amount owed to the landlord for rent is \$3,400.00 as outlined above.

In relation to the landlord's claim for cleaning; a bathroom sink replacement; and water damage. I find the landlord has failed to show the condition of the residential property; the existence of a bathroom sink and where any water damage had occurred prior to the start of the tenancy and has therefore failed to establish that any damage is a result of a violation of the *Act*, regulation or tenancy agreement, I dismiss this portion of the landlord's application.

As to the cleaning of the rental unit, Section 37 of the *Act* requires a tenant who vacates a rental unit to leave the rental unit reasonably clean and undamaged except for reasonable wear and tear. I accept from the photographic evidence the tenant failed to comply with Section 37 and the landlord was required to clean the interior of the rental unit.

Despite the tenant's dispute of the condition of the yard at the start of the tenancy and the landlord's failure to establish that condition in this hearing, I find, based on the photographic evidence of the interior of the rental unit and on the balance of probabilities the tenant contributed to the condition of the residential property and had a responsibility under Section 37 to clean the property at the end of the tenancy.

As such, I find based on the time required to clean the residential property the landlord is entitled to compensation for the efforts to clean the property. The landlord states there was a total of 135 hours of clean up required. I find that compensation in the amount of \$750.00 to be a reasonable amount for cleaning.

Conclusion

I find the landlord is entitled to monetary compensation pursuant to Section 67 and I grant a monetary order in the amount of \$4,200.00 comprised of \$3,400.00 rent owed; \$750.00 for cleaning and the \$50.00 fee paid by the landlord for this application.

This order must be served on the tenant. If the tenant fails to comply with this order the landlord may file the order in the Provincial Court (Small Claims) and be 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: July 07, 2011.

Residential Tenancy Branch