

Decision

Dispute Codes:

MND, MNR, MNDC, MNSD

Introduction

This Dispute Resolution hearing was set to deal with an Application by the landlord for a monetary order for loss of rent for part of March and compensation for cleaning and repairs to the unit.

The landlord appeared and gave testimony.

Preliminary Matter

The landlord testified that he had served each of the two co-tenants separately by registered mail, sent to an address provided by the tenant as the forwarding address during a phone call. The landlord provided a tracking number of the registered mail for service to one of the co-tenants, but was not able to verify the service to the second co-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, proof was provided to verify that 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, this application will therefore be amended to exclude the name of the party not served and the hearing will proceed against the co-tenant for whom the landlord verified service.

Issue(s) to be Decided

The landlord was seeking a monetary order and to retain the security deposit and the issue to be determined 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 one year fixed-term tenancy began in August 2010 and the landlord discovered that the tenant had suddenly vacated without notice around February 18, 2011. The rent was \$1,600.00, plus 65% of the utilities and the security deposit was \$800.00. The landlord testified that there was a written agreement. However, no copy of the tenancy agreement was in evidence. The landlord testified that, although no move-in or move-out condition inspection reports were completed, the unit was brand new when the tenant moved in and the landlord provided photographic evidence of the condition on move-out.

The landlord testified that the tenant left the unit in a filthy condition with possessions, garbage and food left inside and outside of the unit. The landlord testified that this required 12 hours of cleaning at a cost of \$240.00, carpet cleaning costing \$239.65, and \$65.00 for the dump fees. The landlord provided invoices to verify these charges.

The landlord stated that, due to the tenant's failure to give proper written notice to vacate as required under the *Act*, he was not able to re-rent the unit until March 5, 2011 and is claiming a loss of rent of \$266.66 as well as advertising fees of \$99.23. The landlord testified that the tenant also left unpaid utility charges of \$729.20. The landlord provided utility bills not in the tenant's name. The tenancy agreement was not in evidence but the landlord testified that there was a term in the contract requiring the tenant to pay 65% of the shared hydro.

The landlord testified that the tenant had left damage to the walls and had painted some rooms in a haphazard fashion with saturated colors that forced the landlord to patch and re-paint the entire unit at a cost of \$360.00 for labour and materials costing \$117.33. The landlord provided invoices for these costs.

The landlord testified that a closet door was damaged beyond repair and a mirror was missing and both were replaced at a cost of \$144.46. The landlord provided a copy of the receipt for these purchases.

Because the tenant failed to return the keys, the landlord found it necessary to change the locks and included an invoice for \$200.95. The landlord is also claiming the cost of postage for the registered mail.

The total monetary compensation sought by the landlord is for \$2,419.33.

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 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 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.

With respect to the landlord's claims for cleaning and repairs, I find that 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.

Sections 23(3) and 35 of the Act for the move-in and move-out inspections state that the landlord must complete a condition inspection report in accordance with the regulations and both the landlord and tenant must sign the report, after which the landlord must give the tenant a copy in accordance with the regulations. Part 3 of the Regulation goes into significant detail about the specific obligations regarding how and when the Start-of-Tenancy and End-of-Tenancy Condition Inspection Reports must be conducted.

In this instance I find that neither a move-in condition inspection report nor move-out condition inspection report was completed. However, I accept the landlord's testimony that the unit was new when the tenant moved in and that the tenant's actions in suddenly vacating the unit somewhat impeded the landlord's ability to try to attempt a move-out inspection.

I find that the landlord is entitled to \$240.00 for the cleaning , \$239.65 for carpet and \$65.00 for the dump fees. .

With respect to the claim for loss of rent for March, I find that the tenant did not end this tenancy in accordance with the Act. According to the landlord's testimony this was a fixed term tenancy that could not validly ended by either party until the expiry date. However, in the absence of the agreement, even in a month-to-month tenancy, the Act only permits a tenant to end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that (a) is not earlier than one month after the date the landlord receives the notice, and; (b) is the day before the day in the month that rent is payable under the tenancy agreement. I find that the tenant's failure to comply resulted in damages and the landlord is entitled to be compensated loss of rent of \$266.66 as well as advertising fees of \$99.23.

With respect to the claim for utilities, I find that the landlord had submitted the invoices into evidence, but did not provide a copy of the agreement that verified the term. Section 6 of the Act states that a party can make an application for dispute resolution seeking enforcement of the rights, obligations and prohibitions established under either the Act or the tenancy agreement and section 58 of the Act also states that, except as restricted under the Act, a person may make an application for dispute resolution in relation to a conflict dealing with: (a) rights, obligations and prohibitions under the Act; OR (b) *rights and obligations under the terms of a tenancy agreement*. (My emphasis)

Utility payment arrangements are not specifically regulated under the Act, except for a requirement under section 46 that in situations when a term in a tenancy agreement requires payment of utilities to the landlord, the landlord must provide the tenant with a written demand for payment 30 days before utility arrears become rent arrears for the purpose of issuing a Notice to end Tenancy. How utilities are paid and the amounts to be paid by the tenant would be a matter negotiated between the parties as part of the agreement between them.

On the subject of whether or not terms of a tenancy agreement can be enforced, Section 6(3) of the Act states: A term of a tenancy agreement is not enforceable if:

- the term is inconsistent with this Act or the regulations,
- the term is unconscionable, or
- **the term is not expressed in a manner that clearly communicates the rights and obligations under it.** (my emphasis)

In this instance, in the absence of a copy of the tenancy agreement in evidence to show the specific terms regarding payment of utilities, I find that the term for utility payment is not sufficiently clear nor verified, therefore the portion of the landlord's monetary claim relating to utilities must be dismissed. .

With respect to the cost of painting, I find that the manner in which the tenant painted and the damage to the walls justified the landlord's decision to repaint. However, awards for damages are intended to be restorative, meaning the award should place the applicant in the same financial position that they would have been in, 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 value, 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. In this instance I find that the average useful life of a paint finish is 4 years and due to the actions of the tenant, these premises had to be repainted after the 8-month tenancy. Accordingly I find that the landlord is entitled to be compensated a portion of the cost of labour in the amount of \$300.00 and paint supplies of \$100.00.

I find that the landlord is entitled to \$144.46 for replacement of the damaged closet door and missing mirror.

With respect to the cost to change the locks I find that section 37 requires that the tenant return the keys to the landlord. However, whether or not the tenant had failed to comply with section 37 of the Act by returning the keys at the end of the tenancy, that section 25 of the Act places the responsibility on the landlord at the start of the next tenancy, to rekey or otherwise alter the locks so that keys or other means of access given to the previous tenant do not give access to the rental unit, and the landlord must pay all costs associated with the changes. Accordingly, I find that this portion of the landlord's application must be dismissed.

I find that the landlord's claim for the cost of registered mail to serve Notices is not a claimable expense contemplated by the Act.

I find that the landlord is entitled total compensation of \$1,505.00 comprised of \$240.00 for the cleaning, \$239.65 for carpet cleaning, \$65.00 for dump fees, \$266.66 loss of rent, advertising fees of \$99.23, painting labour of \$300.00, paint supplies of \$100.00, \$144.46 for replacement door and missing mirror and the \$50.00 cost of this application.

Conclusion

Based on the testimony and evidence I find that the landlord is entitled to \$1,505.00, I order that the landlord retain \$800.00 from the tenant's security deposit in partial satisfaction of the claim, leaving \$705.00. The remainder of the landlord's application is dismissed without leave.

I hereby grant a monetary order in favour of the landlord in the amount of \$705.00. This order is final and binding. It must be served on the tenant and may be enforced through Small Claims if not paid.

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: August 17, 2011.

Residential Tenancy Branch