



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

Decision

Dispute Codes:

MND, MNDC, MNSD, MNR

Introduction

This Dispute Resolution hearing was set to deal with an Application by the landlord for a monetary order for loss of rent, compensation for cleaning of carpets and draperies, liquidated damages and reimbursement for a move-in bonus granted to the tenant at the start of the tenancy.

Both parties appeared and gave testimony.

Issue(s) to be Decided

The landlord was seeking a monetary order for a loss of rent, cleaning, damages and liquidated damages. 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 of rent.

Background and Evidence

The landlord testified that the 6-month fixed term tenancy began on March 21, 2011 and was to expire on September 30, 2011. The landlord submitted into evidence a copy of a tenancy agreement signed by both parties showing the rent of \$720.00 per month and a security deposit of \$360.00. The landlord testified that the tenancy agreement included, as an addendum, a document in which the tenant signed that he accepted a \$150.00 "move-in bonus" and agreed that, should the tenant fail to complete 12 months of tenancy, these funds would be repaid to the landlord by deducting the amount from the tenant's security deposit. Because the tenancy was ended by the tenant prior to the 12-month period, the landlord is seeking enforcement of this tenancy term.

The landlord testified that there was also a requirement that the carpets and window treatments be cleaned at the end of the tenancy before vacating and the tenant failed to do so. The landlord referred to a written statement included on the move-in/ move-out condition inspection report that stated that mandatory cleaning of the carpets and window treatments. The landlord is claiming \$79.99 for the carpet cleaning and \$35.00 for the blinds.

The landlord testified that the tenancy agreement has a liquidated damages term that imposes a charge of \$300.00 for terminating the lease prior to its expiry date and the landlord is seeking this amount.

The landlord is claiming partial loss of rent for the month of June as a new tenant was not found until June 3, 2011. The landlord had submitted into evidence a portion of a document relating to the new tenancy.

The total amount of the claim by the landlord was \$1,184.99 including the \$50.00 filing fee.

The tenant did not dispute the \$300.00 liquidated damages clause, but did dispute all other charges including the alleged loss of rent, the demand for the return of the move-in bonus and the cleaning costs. The tenant testified that the unit was left reasonably clean as required by the Act.

Analysis

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 the Act or the tenancy agreement.

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)

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.

With regard to the \$150.00 charge for the return of a move-in bonus given to the tenant at the start of the tenancy by the landlord, I accept that the parties entered into an ancillary agreement, regarding a funding arrangement between the parties. I find that, section 6(3) of the Act states that a term of a tenancy agreement is not enforceable if ; (a) the term is inconsistent with this Act or the regulations, (b) the term is unconscionable, or (c) the term is not expressed in a manner that clearly communicates the rights and obligations under it.

I find that Part 5 of the Regulation deals with prohibited fees, Part 6 of the Regulation deals with refundable fees charged by landlord and Part 7 of the Regulations deals with non-refundable fees charged by landlord.

I find that there is nothing in the Act that contemplates money being held in trust by the tenant on behalf of the landlord. In this instance, the landlord is attempting to rescind funds already credited to the tenant under a purported term in the agreement that gives the landlord the right to require repayment of the funds, based on the tenant not successfully meeting certain residency criteria.

I find that a monetary credit, once given to the tenant, is no longer under the landlord's authority to rescind under any section of the legislation. Nor would the tenant's failure to refund the credit constitute damages under section 67 of the Act. Moreover, section 20(e) of the Act states that a landlord must not require or include as a term of a tenancy agreement, that the landlord automatically keeps all or part of the security deposit at the end of the tenancy.

Given the above, I find that my authority under the Act is limited to enforcement of the Act and enforcement of compliant terms within a tenancy agreement and does not extend to other associated funding contracts made between the parties. Accordingly, the landlord's claim for \$150.00 to compensate for granting the move-in bonus must be dismissed.

With respect to the claim for cleaning costs I find that section 37 of the Act requires that the unit be left reasonably clean, and I note that the move-out condition inspection report clearly indicated that the unit was left in a clean condition. I also find that the form utilized for the move-in and move-out condition inspection report does not feature a space where a tenant can express disagreement with the landlord's findings. This is a requirement under the regulation.

In addition, I do not find that the term to have the carpets and window treatments cleaned, which is featured on the move-in condition inspection report, to constitute a valid term of the tenancy agreement. I find that, if the landlord intended to impose a higher standard for cleaning beyond that provided in section 37 of the Act, this term would need to be clearly distinguished within the tenancy agreement itself.

For the reasons above, I find that the landlord's claim for carpet cleaning and cleaning of the window treatments must be dismissed.

With respect to the loss of two days rent, I find that the tenant had paid the rent for May and the unit was re-rented for a one-year term beginning on June 3, 2011. However, I find that there was not sufficient proof provided to show that the landlord suffered a two-day loss of rent as a result. I find that this portion of the claim therefore failed to satisfy elements 1 and 3 of the test for damages.

Based on the testimony and evidence presented during these proceedings, I find that the landlord is entitled to be compensated \$300.00 for liquidated damages under the tenancy agreement.

Conclusion

I order that the landlord retain \$300.00 from the tenant's \$360.00 security deposit in full satisfaction of the claim, leaving \$60.00 still to be refunded to the tenant.

I hereby issue a monetary order in favour of the tenant for \$60.00. This order must be served on the landlord and may be enforced in Small Claims Court if necessary.

The remainder of the landlord's monetary claim 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: September 06, 2011.

Residential Tenancy Branch