



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

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 the cost of repairs, cleaning, and disposal of items left after the tenancy.

This Dispute Resolution hearing was reconvened from a hearing originally scheduled to be heard on September 7, 2011. The applicant landlord was not present on September 7, 2011, but her agent attended to advise that the landlord was medically unable to attend the hearing. The tenants objected to the delay. However, the landlord's request for an adjournment was accepted and it was ordered that the landlord's dispute application be reconvened in accordance with section 74 of the Act to be heard on October 5, 2011. At the hearing and in the Interim Decision, the parties were advised that only the evidence submitted prior to the September 7, 2011 hearing would be considered and that no new evidence would be accepted from either party.

The reconvened hearing began on schedule on October 5, 2011. Despite being served with the Notice of reconvened hearing, sent on September 8, 2011, the tenants did not appear. However, the landlord was in attendance.

Preliminary Matter

The landlord had originally applied for dispute resolution hearing on June 30, 2011 and on September 7, 2011 the hearing was adjourned at the landlord's request. This request was granted and the date for the reconvened hearing was set for October 5, 2011. As a condition in granting the adjournment, the parties were instructed that "no further evidentiary submissions will be accepted from either party"

On September 23, 2011, the landlord submitted an amended application altering the amount being claimed in damages. The landlord served this amended application on both the tenants and the Residential Tenancy Branch. Along with the amended application, the landlord also served additional evidence in support of the various monetary claims. This was evidence that the landlord had failed to provide previously in

support of the original application. The new evidence included copies of receipts and a copy of the tenancy agreement.

Pursuant to the Residential Tenancy Proceedings Rules of Procedure, Rule 3.5 requires that, to the extent possible, the applicant must file copies of all available documents, or other evidence at the same time as the application is filed or if that is not possible, at least (5) days before the commencement of the dispute resolution proceeding.

Rules 3.5(c) and 4.1(c) of the Residential Tenancy Rules of Procedure provide that if copies of the evidence are not received by the Residential Tenancy Branch or the other party as required, the dispute resolution officer must apply Rule 11.6 to the evidence.[*Consideration of evidence not provided to the other party or the Residential Tenancy Branch in advance of the hearing*].

In this instance, despite the amended application and additional evidence from the landlord, I declined to adjourn the matter further to permit the tenants to submit more evidence in response to the landlord's new evidence. I found that the landlord's subsequent evidence should not be considered as it was received after the original hearing date was adjourned and was submitted contrary to specific instructions that no additional evidence would be accepted from either party. I found that accepting this evidence would be prejudicial to the respondents who did properly follow the instructions that were given and were therefore deprived of the opportunity to submit their own evidentiary material in response to the landlord's new submissions.

Moreover, I find that the evidence provided by the landlord along with the amended application consisted of documents that were already in existence prior to the original hearing and pertained to the claims made in the original application. I found that this evidence should rightfully have been submitted within the Residential Tenancy Hearing Rules of Procedure deadlines, prior to the scheduled hearing date on September 7, 2011.

Accordingly, the late evidence from the landlord was not taken into consideration in the determination of this dispute. However verbal testimony from the landlord with respect to the content of the late evidence was accepted and considered. .

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 in December 2009 and ended on October 31, 2010. The monthly rent was \$2,200.00. The security deposit was already determined in a previous hearing on the tenant's application.

The landlord gave verbal testimony that, when the tenant vacated, the unit was left in an unclean and damaged condition. The landlord stated that a move-in condition inspection report was completed but the tenants did not cooperate in the move-out condition inspection. However, no copies of the move-in and move out condition inspection reports were in evidence.

he landlord was claiming the following monetary compensation:

- \$120 for carpet cleaning entailing 6 hours of labour at \$20.00 per hour
- \$200.00, \$60.00 and \$100.00 for hauling and disposing of items left by the tenant
- \$565.79 to repair a glass door allegedly damaged by the tenant
- \$200.00 for 10 hours of cleaning at \$20.00 per hour
- \$183.04 for plumbing repairs to the sink faucet and toilet handle
- \$634.76 in utility charges transferred to the landlord's taxes on January 1, 2011

The total claim in the amended application was for \$1,998.74 and the landlord is seeking a monetary order for this amount.

Analysis:

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 fails to 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 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 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. Based on the evidence, I am unable to find that the tenant had failed to comply with section 37 of the Act. Even if I accepted that the landlord incurred all of the expenditures claimed, this fact would only satisfy element 3 of the test for damages. The absence of copies of the move-in and move-out condition inspection reports made it impossible to clearly establish the before-and-after state of the rental unit.

With respect to the utility charges, I find that there was not sufficient proof that the amount of charges placed on the landlord's tax bill stemmed from the default of these particular tenants.

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: October 03, 2011.

Residential Tenancy Branch