



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNR, MND, MNSD, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord for a monetary order for loss of rent, utilities and damage to the rental unit totalling \$4,256.44 and to retain the \$800.00 security deposit being held on behalf of the tenant.

The landlord and the late tenant's sister representing the tenant's estate, appeared and gave testimony.

Issue(s) to be Decided

The issue to be determined, based on the testimony and evidence, is whether or not the landlord is entitled to monetary compensation for loss of rent and compensation for damages.

Background and Evidence

The tenancy was for a fixed term starting in April 2010 and was set to end July 31, 2011. However, due to a medical health issue, the tenant terminated the tenancy on June 30, 2011. Rent was \$1,600.00 per month and a security deposit of \$800.00 was paid.

The landlord testified that because the tenant terminated the tenancy early, thereby violating the agreement, the tenant is responsible to compensate the landlord for any losses that she incurred as a result. The landlord testified that, although ill, the tenant still had the option of finding someone to sublet, but failed to do so. The landlord testified that she attempted to find a replacement tenant and submitted evidence that the unit was advertised for rent at \$1,700.00. However, she was not successful in re-renting the unit and suffered a loss of one month rent in the amount of \$1,600.00 which is being claimed. The landlord defended advertising the unit at a higher rent, stating that the rental market would support charging \$1,700.00 for the unit and she should not be forced to lock into a new fixed term tenancy at \$1,600.00 for a whole year, merely because this tenant contravened the agreement by ending the tenancy one month prior to the expiry date.

The late tenant's representative disagreed with the landlord's claim and testified that the tenant had no choice but to end the tenancy as she was terminally ill and could not physically navigate the stairs. The tenant's sister stated that, as a consequence of being forced to relinquish her home, the tenant failed to fulfill the contract. The tenant's sister testified that the tenant had asked the landlord, given her circumstances, to release her from the contract for the final month and the landlord refused. The tenant pointed out that, in the landlord's efforts to find a replacement tenant, the landlord failed to mitigate her losses by demanding a significantly higher rental rate than the tenant's contract provided. The tenant made reference to copies the advertisements placed in evidence by the landlord, that stated the unit was for rent for \$1,700.00 per month, instead of the \$1,600.00 rent that had been paid by the tenant.

The landlord testified that the tenant left utility bills that the landlord was forced to resolve before the utilities could be reconnected in the landlord's name and the landlord was claiming \$32.40 for hydro and \$45.68 for gas utilities.

The tenant's representative disputed these charges on the basis that all of the outstanding utility bills were taken care of on the tenant's behalf and were paid in full. The tenant's sister stated that she could provide confirmation of payment to the landlord.

The landlord testified that the tenant left the unit in a deficient condition with drywall damage to the stairwell wall and ceiling, shower door damage, a stain on the painted counter top in the bathroom, scratches on the laminate flooring, punctures in the drywall where the cable box was fastened, a missing fixture, damaged tiles, and multiple stains on the carpet requiring replacement of the floor covering.

The landlord is claiming \$1,778.36 for repairs. The landlord testified that the monetary losses include \$200 for labour for a variety of tasks, \$50.00 for patching the entry hall drywall and \$800.00 compensation for chips to the floors and scratches to the stove-top. The landlord supplied copies of invoices and receipts for the work done and items purchased.

The tenant disputed the above claims on the basis that the repairs were dealing primarily with normal wear and tear. The tenant pointed out that some of the claims by the landlord were not based on actual, verified losses.

The landlord testified that when the tenant moved in, the carpet, which was approximately 18 months old, only had one stain on it. According to the landlord, at the end of the tenancy this carpet was found to be ruined by multiple stains all over it. The landlord testified that she made an unsuccessful attempt to remove the stains by shampooing the carpet herself. The landlord stated that she did not have a professional

try to clean the carpet. The tenant testified that she approached a an expert carpet cleaning company by email and sent photos but was advised that the carpet could not be restored. No copy of this alleged communication was in evidence. The landlord is claiming the replacement costs of the carpeting.

The tenant's representative disputed the carpet claim, stating that the floor covering was already previously stained when the tenancy began, as clearly documented in the landlord's move-in condition inspection report. The tenant's representative acknowledged that, at the conclusion of the tenancy, the carpet was not professionally cleaned by the tenant or her caretakers, but felt that this was not sufficient reason for the landlord to justify having the entire carpet replaced at the tenant's expense. The representative pointed out that there is an expectation that the landlord would first try professional cleaning of the area to restore the carpet to a reasonable state, before taking the drastic step of replacing the flooring altogether. The tenant's representative also pointed out that the landlord has not offered any proof to confirm the actual age of the original carpet which appeared to be much older than claimed.

Analysis

With respect to an applicant's right to claim damages from another party, section 7 of the Act provides that if a party fails to comply with the Act or agreement, the non-complying party must compensate the other for any damage or loss that results. 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 reasonable steps to mitigate or minimize the loss or damage

In regard to the landlord's claim for utilities, I find that the charges to the landlord were not caused by the tenant, who did pay the outstanding utility charges. I find that, because the utilities were brought up to date by the tenant, there was no violation of the Act on the part of the tenant and therefore the claim does not satisfy element two of the test for damages. I find that this portion of the application must be dismissed.

With respect to the landlord's claim for loss of rent for July 2011, I find that the tenant did violate the agreement by prematurely ending the tenancy and the landlord did suffer a loss of rent for the month of July 2011 in the amount of \$1,600.00. In this regard, I find that elements one, two and three of the test for damages were satisfied. However, to satisfy element four of the test, which is based on section 7(2) of the Act, the landlord must also prove that reasonable steps were taken to minimize the potential loss.

I find that the landlord had two months notice that the tenant was vacating and did promptly advertise to re-rent the unit. That being said, I find that by increasing the current rent to \$1,700.00 in these ads, the actions of the landlord did not constitute a reasonable effort to minimize the loss pursuant to section 7(2) of the Act.

I reject the landlord's argument that advertising the unit at \$1,700.00 was appropriate to avoid the possibility of incurring a lower return over the additional 11 months of the new one-year tenancy. I find that, even if the landlord had agreed to a new tenancy for one year at \$1,600.00 per month beginning on July 1, 2011, the landlord would only have lost \$1,100.00 over the eleven months. I find that this is not as great a loss as the \$1,600.00 in damages now being claimed by the landlord due the vacancy for the extra month it took to attract a new tenant willing to pay the higher rent. Given the above, I find that the portion of the claim relating to loss of rent must be dismissed as the claim fails element four of the test for damages.

With respect to the portion of the application claiming damages for other 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. I find that a landlord is not at liberty under the Act to arbitrarily impose a higher standard than the Act provides.

I find that the standard for cleanliness under the Act is "reasonably clean" and it is evident that this unit was returned to the landlord in a reasonably clean state.

In regard to the carpet, I find that the tenancy began with a carpet that had a stain on it and, on a balance of probabilities, ended with more stains on the carpet than were originally there. However, I find that it was incumbent on the landlord to attempt to have the carpets professionally restored to a reasonable state through cleaning before resorting to a complete replacement. I therefore find that this portion of the claim failed element four of the test for damages and must be dismissed.

With respect to the landlord's claims for the cost of repairs for the damage to the suite, I find that, in order to meet element two of the test, the landlord would need to prove that all of the damage being claimed had been caused by the tenant during the tenancy and was not subject to normal wear and tear. I find that the landlord did not offer sufficient

proof to establish a genuine violation of the Act on the part of the tenant and for this reason the \$200.00 claim for general repairs and the \$50.00 claim for the drywall do not sufficiently meet element two of the test for damages and must therefore be dismissed.

With respect to the claim for \$800.00 for the floor scratch that was not repaired and the stove damage allegedly caused by the tenant, I find that, even if I accept that the damage was in excess of normal wear and tear, the claim would fail element three of the test for damages which requires that a quantifiable loss be sufficiently proven. I find that the landlord did not sufficiently prove that she suffered a loss of \$800.00. Therefore, I find that this portion of the landlord's claim must also be dismissed.

Based on the evidence and the testimony, I find that the landlord has not provided sufficient proof to support the claims warranting any monetary compensation and therefore the landlord's application must be dismissed.

Conclusion

As the landlord is not entitled to monetary compensation under the Act, I hereby issue a monetary order to the tenant for the return of the security deposit in the amount of \$800.00. This order must be served on the applicant landlord and may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

The landlord's application is dismissed 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 18, 2011.

Residential Tenancy Branch