



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

Decision

Dispute Codes: MNSD, FF

Introduction

This Dispute Resolution hearing was set to deal with an Application by the landlord for compensation from the tenant for rent, cleaning, carpet cleaning, general repairs, lock and key and the cost of filing for dispute resolution. The total claim was \$2,029.60 and the landlord was seeking to retain a portion of the \$442.50 security deposit in partial satisfaction of the claim.

Despite being served by registered mail sent on July 20, 2011, the respondent did not appear.

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 or loss.

Background and Evidence

The landlord testified that the tenancy began in April 2010 and ended on June 30, 2011. Rent was \$845.00 per month and a security deposit of \$422.50 was paid. The landlord submitted into evidence a copy of the tenancy agreement, a copy of the tenant ledger and a copy of a cleaning invoice showing that 9.3 hours of cleaning was completed at a cost of \$150.00 including supplies, which is being claimed.

Also in evidence was a copy of the move-in and move-out condition inspection report. The tenant had provided the forwarding address in writing at the bottom of the form. This was dated June 30, 2011, which was the end of the tenancy. The tenant had signed the move-out condition inspection report and apparently gave permission for the landlord to retain the security deposit for the cost of cleaning and damage left to the suite. Although the move-in portion of the condition report form was completed showing that the unit was in a reasonably good and clean condition when the tenant moved in, the move-out condition of the various rooms, fixtures and finishes was not indicated in the appropriate sections of the form to verify what state the rental unit was in. The landlord gave testimony with respect to the damage left by the tenant including a filthy carpet, broken toilet tank and unkempt premises. The landlord testified that a loss of

rent for the month of July was incurred due to the amount of time it took to restore the unit to a rentable state and according to the application, the landlord was claiming \$845.00 loss of revenue, \$89.60 for carpet cleaning, \$790.00 for repairs relating to the “rug and wall” and \$100.00 for lock and key replacement. No additional invoices were submitted with respect to the costs being claimed.

The landlord rescinded the \$89.60 claim for the carpet cleaning as a new carpet was installed in the unit. The age of the old carpet was not specified.

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 tenant 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 the claimant took steps pursuant to section 7(2) of the Act minimize the loss.

The burden of proof is on the claimant, that being the landlord.

Section 37(2) of the Act states that, when a tenant vacates a rental unit, the tenant must leave it reasonably clean, and undamaged except for reasonable wear and tear. I find that the tenant did fall short of this requirement.

I also accept that the parties apparently participated in move-in and move-out condition inspections and signed the reports in accordance with the Act. However, I find that the deficiencies and damage being claimed by the landlord were not properly documented nor detailed in the appropriate spaces on the move-out condition inspection report form.

Although the form was not properly completed in accordance with the Act, being that the move-out sections beside each area were left blank, I am still willing to accept that the intention of the tenant, in signing the bottom of the move-out portion of the form, was a final agreement that the landlord could retain the security deposit for damages and cleaning costs. Moreover, I find it could be presumed that the tenant believed that the

forfeiture of his security deposit was accepted by the landlord as satisfaction of all outstanding claims in full.

In any case, even without the above circumstances limiting this claim, I would still find that the landlord's evidence in support of the additional monetary claims was not adequate to satisfy elements 2 and 3 of the test for damages. I find that the lack of detail on the move-out inspection form and the failure to submit all of the relevant receipts and invoices, except for the cleaning bill, would have adversely affected the landlord's claim for the additional monetary compensation beyond the security deposit amount. Given that I am unable to find that the landlord's repair claims were proven, I also find that the loss of one-month rental revenue being claimed for the month of July 2011, must also be dismissed.

In this instance, I find that the parties had evidently come to a mutual agreement in which the landlord was entitled to retain the security deposit in full satisfaction of the damages to the suite. I therefore find that the landlord is entitled to monetary compensation in the amount of \$422.50.

Conclusion

Based on the testimony and evidence, I find that the landlord is entitled to be compensated \$422.50 pursuant to the signed agreement at the bottom of the move-out condition inspection report. The landlord is hereby ordered to retain the tenant's security deposit in full satisfaction of all claims with respect to cleaning and repairs of the suite.

The remainder of the landlord's application 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: October 24, 2011.

Residential Tenancy Branch