



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 and cleaning after the tenancy.

Both parties appeared and gave testimony during the conference call.

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.

Background

The landlord testified that a month-to-month tenancy began on May 1, 2011 and ended on August 31, 2011. The rent was \$1,250.00 and a security deposit of \$625.00 was paid. The landlord testified that, when the tenant vacated repairs to the floor and cleaning was required, for which the landlord is claiming \$800.00. However an itemized list of the claims indicated that the landlord was claiming the following:

- \$400.00 flooring installation
- \$66.86 to purchase flooring material
- \$44.58 for additional flooring material
- \$400.00 cost for 2 people to clean for 2 days
- \$625.00 to retain the security deposit .

The landlord was also seeking reimbursement for the \$50.00 cost of the application. The landlord testified that the tenant had requested new floors and these were installed specifically for the tenant. The landlord testified that, during the tenancy, the tenant had caused flooding in the bathroom that extended to the laminate flooring and damaged it. The landlord testified that the tenant failed to advise the landlord in a timely manner that this damage had occurred. The landlord testified that when it was discovered, the tenant claimed that there was likely a problem with the shower door seal and the landlord added extra rubber along the bottom of the shower door to address this

leakage. The landlord speculated that the water over-run was caused by the tenant's children not closing the shower door properly or from too many people using the shower. The landlord testified that no leaking of this nature had ever occurred in the past and that nothing was wrong with the plumbing. The landlord feels that the tenant is solely responsible for the costs to restore the flooring.

The tenant testified that the water problem was not caused by the tenant and that it was reported to the strata, who then advised the landlord. According to the tenant, the water appeared to have been leaking through a gap around the perimeter of the shower door. The tenant also pointed out that there were other water issues affecting the suite, that had been caused by a problem in the unit above. This flooding had affected the other bathroom.

The landlord is also claiming costs stemming from the tenant not leaving the rental unit in a reasonably clean state. The landlord testified that floors, fixtures, walls and appliances were left in a filthy state at the end of the tenancy. The landlord submitted photos to support this allegation. The landlord acknowledged that no move-in and move out condition inspection reports were completed and did concede that the unit was not fully clean when the tenant moved in. However, the landlord felt that the tenant was fully compensated for having to do their own cleaning because he permitted the tenants to keep some items that had been left in the unit by the previous tenant and he also did not charge the tenant the full exchange rate for payments made in U.S. funds that were valued less than Canadian funds at the time. The landlord testified that he lost \$75.00 over the tenancy. The landlord stated that he had asked to be paid by cheque, but the tenants stated that they did not have a chequing account, so he agreed to accept the U.S. cash..

The tenant testified that when they moved into the unit, the previous tenant was leaving and no cleaning at all was done by the prior occupant nor the landlord. The tenant testified that they spent over a week completely cleaning the unit, during which time their children could not stay on the premises, and had to wait until it was made fit for habitation. The tenant testified that the landlord had committed to a rent reduction in compensation for the cleaning they had to do, but never gave any reduction at all. The tenant stated that they never requested to be given the items left by the previous occupant..

According to the tenant the unit was left in a cleaner condition than it was in when they originally took possession. The tenant stated that the only area they did not clean before leaving was the one bathroom that had all of the serious water problems. The tenant's position is that the landlord is not entitled to compensation for cleaning.

With respect to the payment in U.S. dollars, the tenant stated that the landlord requested and was given cash in the amount of \$1,280.00 U.S. funds in May, \$1,275.00 in June and \$1,275.00 in July. The tenant stated that they attempted to pay the rent by cheque for August, because the landlord had asked them to pay by cheque. However, when they attempted to give the landlord a cheque, the landlord refused this method of payment and demanded cash. The tenant testified that they then paid the \$1,250.00 rent for August in cash using Canadian funds.

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 does not 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.

Awards for damages are intended to be restorative, meaning the award should place the applicant in the same financial position had the damage not occurred. Items and finishes have a limited useful life and they do wear out over time. This is recognized in

Residential Tenancy Policy Guideline 37 which lists the estimated useful life of interior and exterior finishes, items and fixtures.

I find that section 32 of the Act imposes responsibilities on both the landlord and the tenant for the care and cleanliness of a unit. A landlord must provide and maintain residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law, having regard to the age, character and location of the rental unit to make it suitable for occupation by a tenant. A tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access. While a tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant, a tenant is not required to make repairs for reasonable wear and tear.

Plumbing issues and any damage caused by failure of pipes or fixtures are generally bourn by the landlord under the Act, unless it is proven that the tenant was destructive or negligent in some way. Repairs that are necessary due to normal wear and tear, would always be the landlord's responsibility to rectify. On the question of whether or not this particular damage stemmed from normal use of the bathroom and shower, I find that there is not sufficient evidentiary proof to show that the tenant caused the problem. Therefore, I find that this part of the landlord's claim fails to satisfy element 2 of the test for damages.

With respect to the landlord's claim for \$400.00 in cleaning costs, 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.

In establishing whether or not the tenant left the unit in the same condition as when the tenancy began, I find that this is best proven through the submission of move-in and move-out condition inspection reports containing both party's signatures. Section 23(3) of the Act covering move-in inspections and section 35 of the Act for the move-out inspections places the obligation on the landlord to complete the condition inspection report in accordance with the regulations and both the landlord and tenant must sign the condition inspection report after which the landlord must give the tenant a copy of that report in accordance with the regulations.

In this instance, the landlord admitted that neither a move-in condition inspection report nor move-out condition inspection report was completed. I find the failure to comply with sections 23 and 35 of the Act has hindered the landlord's ability to establish the before and after condition of the unit. Moreover, the testimony of both parties confirmed that, when this tenant took occupancy, the unit was definitely not reasonably clean.

Given the above, I find that the landlord's claim for reimbursement for the cleaning costs at the end of the tenancy do not satisfy element 3 of the test for damages and must therefore be dismissed.

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.

As the landlord is not entitled to monetary compensation, I find that the tenant's security deposit and it must be refunded and I hereby issue a monetary order in favour of the tenant for \$625.00. This order must be served on the landlord and, if necessary, can be filed in small Claims Court and enforced as an Order of that Court.

This decision is final and binding and 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: December 01, 2011.

Residential Tenancy Branch