



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

Decision

Dispute Codes:

MNSD, MND, FF

Introduction

This Dispute Resolution hearing was set to deal with an Application by the landlord to retain the tenant's \$575.00 security deposit and a monetary order for cleaning, repairs and failure to return key fobs.

The landlord testified that the tenant had Despite being served by registered mail sent on DT, 2011, the respondent did not appear.

Issue(s) to be Decided

The landlord was seeking to retain the deposit and the issue to be determined 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 on October 1, 2009 and the tenant moved out on May 31, 2011. A security deposit of \$575.00 and key fob deposit of \$25.00 were paid.

The landlord submitted into evidence copies of a move-in condition inspection report signed by the tenant and a copy of a move-out condition inspection report that had been completed by the landlord in the absence of the tenant. Additional evidence included a copy of the tenancy agreement, a copy of the tenant's written notice to end the tenancy dated April 30, 2011, effective May 31, 2011, receipts and tenant ledgers.

Also submitted into evidence were two copies of a form titled "*Security Deposit Refund Request*" including an "*Apartment Inspection Summary*". One of these was dated June 9, 2011 and indicated that the tenant had not provided a forwarding address. The other copy was a revised form dated September 29, 2011, on which the a forwarding address had been added. The landlord testified that the tenant had never provided her forwarding address in writing. However, according to the landlord, the tenant later

contacted the approximately three months after the tenancy had ended and gave her forwarding address over the telephone.

The landlord testified that before leaving, the tenant failed to return 2 of the 3 key fobs she was given. The landlord had submitted evidence showing that the tenant paid a deposit of \$25.00 and documents that confirmed the tenant had been given more than one fob. The landlord is claiming \$56.00 for the unreturned fobs.

The landlord testified that, when the tenancy ended, the tenant had not participated in the move-out inspection which documented that the unit was left damaged and unclean. The landlord is seeking \$104.00 for carpet cleaning and submitted a copy of an invoice. The landlord is claiming \$98.24 compensation for cleaning the drapes and submitted a copy of an invoice for \$52.00 representing charges of \$1.00 per pleat plus \$6.24 HST. The landlord testified that the additional amount being claimed above the \$58.24 was labour costs for removal and re-installment of the window treatments for cleaning

The landlord testified that the tenant had damaged the flooring which was approximately 5 years old. The landlord testified that replacement was required and submitted an invoice for \$216.30 plus tax and is claiming \$242.26.

With respect to the costs for cleaning, the landlord testified that the unit required 3 hours of cleaning at a cost of \$28.50 per hour amounting to \$85.50 and additional cleaning of the “*kitchen/stove/bath*” in the amount of \$100.80 as shown on the “*Apartment Inspection Summary*”. The Move-Out Inspection Report (“*Suite Inspection Report*”) beside the “*check out condition*” row, indicated that cleaning was required for the oven charged at \$44.00, the range hood charged at \$11.20 and the refrigerator charged at \$44.00. The total being claimed for cleaning is \$186.30.

The landlord is also claiming \$112.00 for garbage and furniture disposal. The total claim is \$798.80 plus the \$50.00 cost of the application.

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.

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.

In regard to the claim for the 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.

With respect to compliance with section 37 of the Act, I find that the tenant's role in causing damage can be established by comparing the condition before the tenancy began with the condition of the unit after the tenancy ended, through the submission of properly completed copies of the move-in and move-out condition inspection reports conducted jointly by both parties. In this instance I find that the section 23(1) of the Act was followed and the landlord and tenant both participated in, and signed, the move-in inspection. I find that the tenant did not indicate in the spaces available whether she agreed or disagreed with the notations on the Move-in inspection report.

With respect to the move out inspection, I accept that the tenant failed to participate in this process. However, I find that section 35 of the Act states that, in arranging the move-out inspection, the landlord must offer the tenant at least 2 opportunities, as prescribed, for the inspection. Part 3 of the Regulation goes into significant detail about the specific obligations regarding how and when the Start-of-Tenancy and End-of-Tenancy Condition Inspections and Reports must be conducted and section 17 of the Regulation states that:

- (1) A landlord must offer to a tenant a first opportunity to schedule the condition inspection by proposing one or more dates and times.
- (2) If the tenant is not available at a time offered under subsection (1),
 - (a) the tenant may propose an alternative time to the landlord, who must consider this time prior to acting under paragraph (b), and
 - (b) the landlord must propose a second opportunity, different from the opportunity described in subsection (1), to the tenant by providing the tenant with a notice in the approved form.
- (3) When providing each other with an opportunity to schedule a condition inspection, the landlord and tenant must consider any reasonable time limitations

of the other party that are known and that affect that party's availability to attend the inspection.

The Act states that the landlord must make the inspection and complete and sign the report without the tenant if:

- (a) the landlord has complied with subsection (3), and
- (b) the tenant does not participate on either occasion.

Section 36 (2) of the Act states that the right of the landlord to claim against a security deposit, for damage to residential property is extinguished if the landlord does not comply with section 35 (2) [*2 opportunities for inspection*],

I find that during the final month of the tenancy there was no evidence presented by the landlord to indicate that the landlord had ever notified the tenant of the inspection scheduled for May 31, 2011, nor that the landlord had ever offered the tenant two opportunities to participate. I also find that the landlord did not submit verification that the landlord had offered the tenant a final opportunity to participate in the move out condition inspection on the approved form.

In addition to the above, section 20(1) states that a condition inspection report completed under section 23 or 35 of the Act must contain the following information:

- (a) the correct legal names of the landlord, the tenant and, if applicable, the tenant's agent; (*my emphasis*)
- (b) the address of the rental unit being inspected;
- (c) the date on which the tenant is entitled to possession of the rental unit;
- (d) the address for service of the landlord; (*my emphasis*)
- (e) the date of the condition inspection;
- (f) a statement of the state of repair and general condition of each room (*my emphasis*)

I find that the document put forth into evidence as the Move Out Condition Inspection Report, ("Suite Inspection Report"), does not show the tenant's name in the applicable space at the top of the first page of the report. I further find that the landlord's name and service information is not shown anywhere on the report.

Section 21 of the Residential Tenancy Regulations also states that, in dispute resolution proceedings, a condition inspection report completed in accordance with this Part is

evidence of the state of repair and condition of the rental unit or residential property on the date of the inspection, unless either the landlord or the tenant has a preponderance of evidence to the contrary.

Even if I have found that the landlord's right to claim against the security deposit was not extinguished under section 36(2) of the Act, I still must find that, the value of the move-out condition inspection report was affected by procedural deficiencies that function to negatively impact the evidentiary weight of the report.

I accept the evidence submitted by the landlord that the tenant did not return two key fobs and that the landlord charged \$56.00 for the fobs. However, I find that the landlord's claim for compensation for the cost of the fobs failed to meet element 3 of the test for damages as there was insufficient verification of the actual monetary cost charged to the landlord for replacing the fobs. For this reason, I find the claim must be dismissed. That being said, I also find that the landlord is not required to refund the \$25.00 fob deposit being held.

I accept that the landlord paid \$104.00 for carpet cleaning plus \$12.48 HST and \$52.00 for drapery cleaning plus \$6.24HST, as supported by the invoices and I find that the landlord is entitled to be compensated. However, I find that the additional charges for the draperies were not adequately proven.

I accept that the landlord paid to have the floor replaced. However, I find that, with respect to establishing that the tenant was solely responsible for damaging the flooring beyond normal wear and tear, to the extent that it required replacement, was not verified sufficiently to meet element 2 of the test for damages. I find that this claim must therefore be dismissed.

With respect to the costs for cleaning, I accept that the landlord did incur a cost for 3 hours cleaning the unit. However, section 37 only requires that a tenant must only leave the unit "reasonably clean". I find that, other than the data listed on the flawed move-out inspection report, the landlord has not furnished sufficient proof that the unit was left in a condition that was less than reasonably clean.

I also find that the additional charges of \$100.80 for cleaning the stove, range hood and refrigerator were not adequately supported to justify the amount of the expenditure, to satisfy elements 2 and 3 of the test for damages. Moreover, I find that the flooring renovations would have required a clean-up afterwards, whether or not the tenant had left the unit in a pristine condition. I find that the landlord's claim of \$186.30 for the

cleaning must be dismissed as all elements of the test for damages were not sufficiently met.

With respect to the \$112.00 for garbage and furniture disposal, I find that this claim is not sufficiently supported with evidence to satisfy elements 1, 2 or 3 of the test for damages. Accordingly, I find that it must be dismissed.

Based on the evidence and the testimony, I find that the landlord is entitled to total compensation of \$199.72 comprised of \$116.48 for the carpet cleaning, \$58.24 for the drapery cleaning and \$25.00 reimbursement for half of the application fee.

Conclusion

Based on the testimony and evidence I find that the landlord is entitled to retain \$199.72 from the tenant's \$575.00 security deposit leaving a balance of \$375.28 as a credit to the tenant. I hereby grant a monetary order in the amount of \$375.28 in favour of the tenant. This order must be served on the landlord and may be enforced in small claims court if necessary.

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: December 20, 2011.

Residential Tenancy Branch