



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MND, MNDC, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord for a monetary order for damages to the unit site or property, compensation for damage or loss, recovery of the filing fee, and an order to keep the security deposit.

The Landlord testified that he served the Tenant, by registered mail with the Application for Dispute Resolution and Notice of Hearing on November 04, 2011, and provided the tracking information from the Canada Post receipt. I find that the Tenant was served the Application and Notice of Hearing in accordance with section 89 of the Residential Tenancy Act (the "Act").

The Tenant did not participate in the conference call hearing. The Landlord was given full opportunity to be heard, to present evidence and to make submissions.

Preliminary Matter(s)

The Landlord stated that he wished to withdraw his claim for \$50.00 for hauling costs for disposing of garbage and discarded furniture left in the rental unit, as he could not locate the receipt for this.

Issue(s) to be Decided

Has the Tenant breached the Act or tenancy agreement, entitling the Landlord to a monetary order for damages to the unit site or property, compensation for damage or loss, recovery of the filing fee, and an order to keep the security deposit?

Background and Evidence

The signed fixed term tenancy agreement between the parties was submitted in the evidence by the Landlord. The tenancy commenced on October 01, 2011 with a fixed term that was to continue for one year. The rent is due on the first day of the month in the amount of \$745.00. The Tenant paid the Landlord a security deposit of \$372.50.

The tenancy agreement states that \$300.00 in liquidated damages is owed by the Tenant if the fixed term tenancy agreement is terminated by the Tenant before the end of the original term. The liquidated damages clause in the tenancy agreement states that this is to cover the administration costs of re-renting the rental unit, and does not preclude the Landlord from pursuing other remedy for damage or loss under the Act. The Landlord submitted into evidence a copy of the move-in inspection report done with and signed by the Tenant on October 03, 2011.

The Landlord stated that the Tenant paid rent for the month of October 2011 in full and had moved all of his belongings into the rental unit and resided there before suddenly giving notice. The Landlord submitted into evidence the Tenant's notice to vacate dated October 12, 2011, which contains the Tenant's forwarding address out of Province. The Tenant's notice states that he had a family emergency out of Province and would be moving out of the rental unit on or before October 31, 2011. The Landlord stated that they immediately began showing the rental unit and advertising to seek new prospective tenants to mitigate their loss. The Landlord stated that the Tenant abandoned the rental unit on October 19, 2011, without cleaning the rental unit and left behind garbage and discarded pieces of furniture. The Landlord stated the Tenant having abandoned the rental unit did not attend a move-out inspection. As a result, the Landlord conducted the move-out inspection without the Tenant. The Landlord stated that they were able to obtain new tenants for the rental unit for November 01, 2011 so they did not lose rental income. However, the Landlord stated that in order for the new tenants to move into the rental unit, the Landlord had to clean it and clean the carpets. The Landlord states that their cleaning costs were \$82.00 (supplies plus 3 hours of cleaning) and carpet cleaning \$89.60. The Landlord submitted into evidence the receipts for the costs incurred. The Landlord is also claiming \$300.00 in liquidated damages as stated in the tenancy agreement, due to the administrative, advertising and re-renting costs incurred.

The Landlord requests an order for \$471.60. The Landlord has also applied to keep the security deposit towards the amounts owed.

The Landlord has also applied for reimbursement of the \$50.00 filing fee for this proceeding. The Landlord's total monetary claim is \$521.60.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

Section 67 of the Residential Tenancy Act states:

Without limiting the general authority in section 62(3) [*director's authority*], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

In a claim for damage or loss under the Regulation the Applicant (in this case the Landlord) has the burden of proof to establish his claim on the civil standard, the balance of probabilities.

To prove a loss and have the Respondent pay for the loss the Applicant must satisfy four different elements:

1. Proof that the damage or loss exists,
2. Proof that the damage or loss occurred due to the actions or neglect of the Respondent in violation of the Act or agreement,
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage, and
4. Proof that the Applicant (the Landlord) followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

Section 37 (2) of the Act states:

Leaving the rental unit at the end of a tenancy

37 (2) When a tenant vacates a rental unit, the tenant must

- (a) leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.

I find that Landlord's evidence supports that the Tenant abandoned the rental unit and that the Landlord incurred costs as a result of the Tenant breaking the one year fixed term tenancy agreement. I find that the rental unit had to be cleaned and the carpets had to be cleaned in order to re-rent it. I find that the Landlord undertook the cleaning and carpet cleaning as soon as they discovered the rental unit was abandoned and successfully re-rented the unit to new tenants, thus mitigating their loss significantly. The tenancy agreement states a reasonable amount of liquidated damages of \$300.00, which is allowed by the Act. I find that the Landlord is entitled to \$300.00 in liquidated damages to compensate for the administrative and advertising costs involved in re-renting the rental unit. I accept the Landlord's testimony and evidence that the Tenant failed to clean the rental unit before moving out and that the move-out was sudden. I find that the Landlord's receipts for cleaning and carpet cleaning costs are reasonable

and that it was necessary to do this in order to re-rent the unit. As a result the Landlord is entitled to \$82.00 for cleaning the rental unit and \$89.60 for the carpet cleaning.

As a result, I find that the Landlord has established a monetary claim of \$471.60.

As the Landlord has succeeded in their Application, I find that the Landlord is entitled to recover the \$50.00 fee for this proceeding. This brings the total amount of the monetary order to \$521.60.

I order that the Landlord retain the security deposit (\$372.50), in partial satisfaction of the claim and I grant the Landlord an order under section 67 for the balance due of **\$149.10.**

Conclusion

I find that the Landlord may keep the security deposit in partial satisfaction of the claim and is granted a monetary order for the balance due in the amount of **\$149.10.**

The order accompanies the Landlord's copy of this decision. The order must be served on the Tenant and may be filed in the Supreme Court.

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: February 02, 2012.

Residential Tenancy Branch