



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

Decision

Dispute Codes: MNR, MNDC, MNSD, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord for a monetary order for loss of rent of \$1,150.00 and the cost of carpet cleaning.

Both parties 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 damages.

Preliminary Matter

Submitted into evidence by the landlord was a copy of the tenancy agreement, copies of communications and receipts. The tenant had also submitted documentary evidence.

Rule 4 of the Residential Tenancy Rules of Procedure, requires that, if the respondent intends to dispute an Application for Dispute Resolution, copies of all available documents or other evidence the respondent intends to rely upon must be received by the Residential Tenancy Branch and served on the applicant as soon as possible and at least five (5) days before the dispute resolution proceeding but if the date of the dispute resolution proceeding does not allow the five (5) day requirement in a) to be met, then all of the respondent's evidence must be received by the Residential Tenancy Branch and served on the applicant at least two (2) days before the dispute resolution proceeding.

However, the tenant's evidence was not served the applicant landlord in accordance with the Act, prior to the hearing as required and therefore was not accepted.

Background and Evidence

The tenancy began on November 1, 2011. Rent was \$1,150.00 and a security deposit of \$575.00 was paid.

The landlord testified that on January 5, 2012, the tenant had given written Notice to vacate effective the end of January and the tenant moved out prior to February 1, 2012.

The landlord testified that the tenant had not given adequate notice in accordance with the Act.

The landlord testified that she immediately posted an advertisement to find a new tenant for February 1, 2012, but was not successful. According to the landlord, because the tenant failed to give proper notice in compliance with the Act, the landlord consequently suffered a loss of \$1,150.00 rent for the month of February 2012, which is being claimed.

Evidence was submitted confirming the landlord's advertisements for new tenants during January 2012.

The landlord testified that it was necessary to clean the carpet after the tenant left and she is therefore claiming \$40.00 for the cost.

The tenant acknowledged that the written Notice to end tenancy was not given to the landlord until January 5, 2012, but testified that they had waited to give their written notice when they paid their rent. According to the tenant, the reason the notice was not given earlier was due to the fact that the landlord was not available until January 5, 2012 for them to contact her.

The tenant did not agree with the landlord's claim for carpet cleaning and pointed out that the landlord had not followed the proper procedure for the move-in inspection and neglected to arranged a move out inspection.

Analysis

The damages claimed by the landlord includes the loss of one month rent and carpet cleaning costs.

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 loss of rent, I find that the tenant did violate section 45 of the Act by failing to give one full month written Notice effective the day before the day rent is due. I find it was established that a loss of \$1,150.00 was suffered by the landlord for the month of February. However in order to establish that the loss of rent claim meets element four of the test for damages, the landlord must show that reasonable steps were taken to mitigate the loss. I find that there is an expectation that the landlord try to find another tenant as quickly as possible by advertising the rental unit without delay. In the case before me, I find that the landlord has met her obligation to make a reasonable effort to mitigate the loss.

In regard to the claimed costs for cleaning, 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 the tenant's role in causing damage can normally be established by comparing the condition before the tenancy began with the condition of the unit after the tenancy ended. In other words, through the submission of completed copies of the move-in and move-out condition inspection reports featuring both party's signatures.

In this instance, the landlord did not submit copies of the move-in and move out condition inspection reports. However, both parties agreed that no move out inspection was ever completed.

Both sections 23(3) for move-in inspections and section 35 for the move-out inspections state that the landlord must offer the tenant at least 2 opportunities, as prescribed, for the inspection. Part 3 of the Regulations 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.

Given that the landlord failed to comply with the Act in regard to the statutory requirement to conduct a move-out condition inspection report, I find that the landlord's claim for carpet cleaning failed to meet all elements of the test for damages and this portion of the landlord's application must be dismissed.

Based on the evidence, I find that the landlord has established a total monetary claim of \$1,200.00 comprised of \$1,150.00 for loss of rent for February 2012 and the \$50.00 cost of the application.

I order that the landlord retain the tenant's \$575.00 security deposit in partial satisfaction of the claim leaving a balance still owed of \$625.00.

Conclusion

I hereby grant the landlord a monetary order for \$625.00. This order must be served on the landlord and may be filed in Provincial Court (Small Claims) and enforced as an order of that Court.

The remainder of the landlord's application is hereby 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: April 16, 2012.

Residential Tenancy Branch