



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MND MNDC, MNSD, FF

Introduction

This Dispute Resolution hearing was to deal with an Application by the landlord for a monetary order for compensation for damage or loss under the Residential Tenancy Act, (the Act) and an order to retain the security deposit in satisfaction of the claim.

Both parties attended the hearing and each gave testimony in turn.

Issue(s) to be Decided for the Landlord's Application

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*.

The burden of proof regarding the above is on the landlord/claimant.

Background and Evidence

The landlord testified that the tenancy began May 1, 2010 and a security deposit in the amount of \$400.00 was paid. The landlord testified that the tenancy ended on January 31, 2012 and the tenants left the rental unit in an unclean and damaged state.

The landlord submitted into evidence, a move-in condition inspection report completed and signed by both parties and a move-out inspection report completed in the tenant's absence. Also in evidence were photos of the rental unit and a receipt for \$232.96 for general cleaning representing 8 hours at \$26.00 per hour.

The landlord testified that the tenant was supposed to meet the landlord to do the move-out condition inspection report, but did not show up so the inspection was done in the tenant's absence. The report indicated that the stove and refrigerator were not properly cleaned and that there was mould in the bathroom and the tub was not clean.

The landlord is claiming:

- \$232.96 for cleaning
- \$50.00 for a "food gift card" for the new tenants
- \$30.00 for a new showerhead and tub mat

- \$40.15 for fuel
- \$50.00 for paint supplies
- \$80.00 for labour to paint the unit

The landlord made reference to the photos and testified that the cleaners had to spend a substantial amount of time to get the kitchen and bathroom clean. The landlord testified that he was forced to offer the incoming tenants a food gift card as they could not use the kitchen until it was cleaned. The landlord testified that he had to purchase the shower head and a bath mat because the tub and fixtures were filthy. With respect to the paint, the landlord testified that walls were damaged beyond normal wear and tear and had to be repainted. The landlord also spent money on gas for his transportation to and from the rental unit.

The tenant testified that they did not refuse to cooperate with the move-out inspection and in fact were shown that certain items required cleaning and they did complete the cleaning as required. The tenant acknowledged that only the refrigerator and stove were not fully cleaned and may have required up to 2 hours worth of cleaning. The tenant testified that they offered to fill the nail holes in the wall, but the landlord told them not to bother. The tenant testified that the remainder of the issues now being brought up by the landlord, were never brought forth by the landlord at the end of the tenancy.

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 this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant 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 order payment in such 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 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 tenant.

Section 37 of the Act states that, when a tenant vacates a rental unit, it must be left in a reasonably clean and undamaged state, except for normal wear and tear.

In establishing whether or not the tenant had complied with this requirement, I find that this can best be established with a comparison of the unit's condition when the tenancy began with the final condition of the unit after the tenancy ended. In other words, 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 regard to the obligations of the landlord in scheduling the move-out inspection, section 16 (1) of the Regulation states that the landlord and tenant must attempt in good faith to mutually agree on a date and time for a condition inspection between 8 a.m. and 9 p.m., unless the parties agree on a different time. And section 17 of the Regulation states that a landlord must offer to a tenant a first opportunity to schedule the condition inspection by proposing one or more dates and times.

However, section 35 of the Act requires that the landlord and tenant together must inspect the condition of the rental unit before a new tenant begins to occupy the rental unit, (a) on or after the day the tenant ceases to occupy the rental unit, or, (b) on another mutually agreed day and it goes on to say that "the landlord must offer the tenant at least 2 opportunities, as prescribed, for the inspection." (my emphasis)

I find as a fact that the landlord approached the tenant to arrange a move-out inspection time and date and this did not work out. There was no evidence that the landlord had offered the tenant two opportunities to schedule the inspection.

I find that, in any case, the data on the move-out inspection report does not fully support all of the landlord's claims. I find that the tenant was given to believe that there were only some minor cleaning issues left undone and that restoring the unit to a reasonably clean condition, as required under section 37 of the Act, would only take about 2 hours.

In addition, I find that, other than the receipts submitted to confirm the cleaning costs, the landlord did not supply adequate documentation for other expenditures to support the claims for the food card, or additional purchases.

I find that the transportation costs being claimed for the landlord to go to and from his rental unit, would be considered as normal operating costs of doing business. I find that expenses of this nature would not be the tenant's responsibility to cover.

Given the above, I find that the landlord is entitled to compensation of \$52.00 for the cost of cleaning the unit and that the landlord's claims for the gift card, shower head, tub mat, paint supplies, painting labour and transportation costs must be dismissed. I also find that the landlord is not entitled to be reimbursed for the cost of the application.

Conclusion

Based on the testimony and evidence presented during these proceedings, I find that the landlord entitled monetary compensation in the amount of \$52.00 for cleaning.

I order that the landlord retain this amount from the security deposit of \$400.00 leaving a security deposit refund balance of \$348.00 owed to the tenant.

I hereby issue a monetary order in favour of the tenant in this amount. This order must be served on the respondent and may be filed in the Supreme Court, (Small Claims), and enforced as an order of that Court.

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: April 17, 2012.

Residential Tenancy Branch