



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

Decision

Dispute Codes: MNR, MND, MNSD, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord for a monetary order for rental arrears, loss of rent, damages for cleaning and repairs and to retain the security deposit in partial satisfaction of the claim.

The landlord testified that, although no written forwarding address was provided by the tenant, they later confirmed the tenant's address with her new landlord and through a Change of Address Notification received from Canada Post.

Despite being served by registered mail sent on February 16 2012, the respondent did not appear.

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 rental arrears owed and whether or not the landlord is entitled to monetary compensation for loss of revenue, cleaning and other damages.

Background and Evidence

The tenancy began in February 2004 and the landlord discovered that the tenant had vacated sometime in mid February 2012. The current rent was \$891.00 and a security deposit of \$362.50 was being held in trust.

Submitted into evidence was a copy of the tenancy agreement signed only by the landlord, copies of the move-in condition inspection report and move-out condition inspection report signed only by the landlord, a copy of a Notice of Rent Increase, and a copy of a bank report with respect to a cheque returned on February 7, 2012.

The landlord testified that, sometime in mid February 2012, they discovered that the tenant had vacated the rental unit without any prior Notice. The landlord testified that they also discovered that the tenant had placed a "stop-pay" on her February rent cheque.

The landlord testified that the tenant left a substantial amount of furniture in the rental unit and failed to leave the unit in a reasonably clean undamaged condition. The landlord testified that they proceeded to do a move out condition inspection in the absence of the tenant because she was not available. The landlord also acknowledged that they had filled in the “move-in” portion of the form without the tenant’s participation after the tenant vacated, despite the fact that the move-in date actually occurred in February 2004, at which time no report was ever completed.

The landlord testified that the rental unit was left in such a state that it was not possible to re-rent the unit for March 1, 2012 and the landlord therefore lost revenue of \$891.00 for the month of March 2012 while repairing and cleaning the unit.

The landlord testified that they spent a total of 20 person-hours cleaning the rental unit at a cost of \$20 per hour for a total cost of \$400.00 in labour for cleaning.

The landlord testified that the abandoned possessions left by the tenant were of little value. However, they were stored for a period of 60 days and the landlord then paid \$30.00 dumping fees plus the cost of gas to discard some of the items.

The landlord is also claiming the cost of repairs for damaged carpets, blinds, closet door, and faucet and also seeks compensation for the rekeying of all doors. The total claim was for \$4,987.76.

Analysis

With respect to the rent owed for February 2012, I find that section 26 of the Act states that rent must be paid on February 1, 2012, when it is due under the tenancy agreement, whether or not the landlord complies with the Act, the regulations or the tenancy agreement. In this instance I find that the tenant did not pay the rent which was to be paid when it was due. I find that the landlord is entitled to be compensated \$891.00.

With respect to the loss of revenue for March 2012 and other damages and losses, I find that an applicant’s right to claim damages from another party, is dealt with under section 7 of the Act which 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 this instance, the burden of proof is on the claimant, that being the landlord, to prove the existence and value of the damage/loss stemming directly from a violation of the agreement or a contravention of the Act by the respondent and verify that a reasonable attempt was made to mitigate the damage or losses incurred.

Section 45 of the Act permits a tenant to end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that (a) is not earlier than one month after the date the landlord receives the notice, and; (b) is the day before the day in the month that rent is payable under the tenancy agreement. In addition to the above, section 52 of the Act states that, in order to be effective, a notice to end a tenancy must be in writing

I find that the tenant failed to give the landlord written notification that she was ending the tenancy in compliance with the Act.

Having found that the tenant was in violation of the Act, I find that the landlord had consequently suffered a loss of revenue because there was not enough time to prepare the unit and arrange a new tenancy prior to March 1, 2012. I find that the landlord's claim meets all elements of the test for damages and the landlord is entitled to \$891.00..

In regard to the claimed costs for cleaning and damages, 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 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 valid and compliant move-in and move-out condition inspection reports containing both party's signatures.

Section 23(3) of the Act deals with the move-in inspection and states that the landlord and tenant together must inspect the condition of the rental unit, when the unit is empty of the tenant's possessions, on the day the tenant is entitled to possession of the rental unit or on another mutually agreed day. The Act also requires that the landlord must offer the tenant at least 2 opportunities, as prescribed, for the inspection.

Once it is completed, both the landlord and tenant must sign the condition inspection report and the landlord must give the tenant a copy of that report in accordance with the Regulations. The Regulations specify that this copy must be given within 7 days after the condition inspection is completed .

If the landlord has offered the tenant two opportunities for the move-in inspection in compliance with the Act and the tenant declines to participate on either occasion, the landlord must then make the inspection and complete and sign the report without the tenant.

Under section 35 of the Act, there are similar obligations relating to the *move-out* inspection report.

Section 36 (2) and 24(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 the Act by offering 2 opportunities for inspection as the tenant moves in or vacates the unit.

I find that the evidence presented by the landlord confirmed that the landlord had not conducted the move-in and move out condition inspection reports in compliance with the Act. I find that this has affected the evidentiary weight of the landlord's claims for damages.

That being said, I find that I can accept that the tenant did not leave the unit in a reasonably clean condition and it required cleaning and garbage removal by the landlord . Accordingly, I find that the landlord is entitled to \$400.00 in compensation for the cleaning and \$50.00 for dumping fees and gas to remove garbage and the tenant's abandoned possessions.

I find that the remainder of the landlord's claims for repairs do not sufficiently meet all elements of the test for damages and therefore must be dismissed.

With respect to the claim for replacement locks, I find that section 25 places the responsibility on the landlord to rekey or otherwise alter the locks so that keys or other means of access given to the previous tenant do not give access to the rental unit, and to pay all costs associated with the change. Therefore I find that the landlord is not entitled to be reimbursed for the cost of the re-keying.

Based on the evidence, I find that the landlord has established a total monetary claim of \$2,282.00 comprised of \$891.00 rent owed, \$891.00 loss of revenue, \$400.00 cleaning costs, \$50.00 for removal of garbage and possessions and the \$50.00 cost of the application.

I order that the landlord retain the security deposit and interest of \$375.32 in partial satisfaction of the claim leaving a balance due of \$1,906.68.

Conclusion

I hereby grant the Landlord an order under section 67 for \$1,906.68. This order must be served on the Respondent and may be filed in the Provincial 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 19, 2012.

Residential Tenancy Branch