

Decision

Dispute Codes:

MNDC, MNSD, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord for \$450.00 monetary compensation for damage to the unit and a request to retain the security deposit in partial satisfaction of the claim.

Both parties appeared and gave testimony during the conference call.

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 damages.

Background and Evidence

The tenancy began in August 2011 with rent of \$900.00 and a security deposit of \$450.00. The tenancy ended on February 29, 2012. The landlord testified that the unit was in pristine condition when the tenant moved in. The landlord testified that when the tenancy ended, the tenant left the unit in need of painting due to patches on the walls. In support of the claim, the landlord submitted into evidence photographs showing patched walls. No receipts for the re-painting were submitted, but the landlord gave verbal testimony that a contractor was paid \$300.00 to do the repair work.

The landlord acknowledged that the parties did not participate in a move-in or move-out condition inspection together. The landlord testified that there was no need for a move-in condition inspection because the unit was brand new. In regard to the failure to conduct a move-out condition inspection, the landlord testified that because the parties were involved in dispute resolution proceedings relating to threatening conduct by the tenant, the landlord felt that scheduling an inspection was not possible.

The tenant testified that the rental unit was left exactly the way it was when she took possession. The tenant testified that she requested that they schedule a move-out condition inspection but the landlord refused her request. The tenant's position was that the security deposit of \$450.00 should be refunded.

Analysis

In regards 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 the Act, the regulations or the 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 to order payment under these 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 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.

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 this instance, the landlord has alleged that the tenant left the unit damaged to the extent that the unit required repainting costing \$300.00, while the tenant's position was that the unit was left in the same condition it was in when the tenancy began.

I find that the tenant's role in causing damages 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. I find that conflicting verbal testimony on the subject will not suffice to support a claim for damages.

Sections 23(3) and 35 of the Act for the move-in and move-out inspections state that the landlord must complete a condition inspection report in accordance with the regulations and both the landlord and tenant must sign the report, after which the landlord must give the tenant a copy in accordance with the regulations. 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 Inspection Reports must be conducted.

In this instance I find that neither a move-in condition inspection report nor move-out condition inspection report was completed. I find the failure to comply with these sections of the Act has hindered the landlord's claim for compensation preventing this monetary claim from satisfying element 2 of the test for damages.

In regard to satisfying element 3 of the test for damages, I find that the landlord also failed to submit sufficient evidence, such as receipts or invoices proving the monetary loss.

Given that the landlord has not succeeded in meeting all four elements of the test for damages, I find that the landlord's claim for damages must be dismissed and the security deposit must be refunded to the tenant forthwith.

Conclusion

I hereby grant a monetary order to the tenant pursuant to section 38 in the amount of \$450.00. This order must be served on the Applicant landlord and may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

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: May 15, 2012.

Residential Tenancy Branch