



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNR, FF

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- a monetary order for unpaid rent and for damage to the unit, site or property pursuant to section 67; and
- authorization to recover her filing fee for this application from the tenant pursuant to section 72.

The tenant did not attend this hearing, although I waited until 9:41 a.m. in order to enable her to connect with this teleconference hearing scheduled for 9:30 a.m. The landlord attended the hearing and was given a full opportunity to be heard, to present evidence and to make submissions. The landlord testified that she handed the tenant a copy of her dispute resolution hearing and written evidence packages on April 29, 2012. I am satisfied that the landlord served these documents to the tenant in accordance with the *Act*.

Issues(s) to be Decided

Is the landlord entitled to a monetary award for unpaid rent and for damage arising out of this tenancy? Is the landlord entitled to recover her filing fee for this application from the tenant?

Background and Evidence

This periodic tenancy commenced on August 1, 2011. Monthly rent was set at \$800.00, payable in advance on the first of each month. The tenant paid a \$400.00 security deposit on July 31, 2011. The landlord testified that she no longer holds any part of that deposit because she agreed to apply it against part of the tenant's rent payment for August 2011 when the tenant was unable to pay all of her rent for that month.

The landlord testified that this tenancy ended on March 31, 2012, on the basis of the tenant's written notice to end tenancy submitted on February 29, 2012.

The landlord's application for a monetary award of \$2,000.00 included a request for recovery of \$800.00 in unpaid rent for April 2012, \$500.00 for cleaning, \$220.00 in supplies and paint, \$200.00 for carpet cleaning. She did not provide a detailed

breakdown of her claim or a monetary order worksheet. The landlord's claim for unpaid rent would more accurately be described as her loss of rent for April 2012, stemming from the tenant's failure to leave the premises reasonably clean and undamaged at the end of this tenancy. The landlord submitted nine photographs relating to the condition of the premises after the tenant vacated the premises, and a brief note explaining why she was submitting her claim. Although she said that she had receipts and invoices to substantiate the expenses she incurred, she did not submit these into written evidence.

Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, a Dispute Resolution Officer may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must 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 other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

Section 45(1) of the *Act* requires a tenant to end a periodic tenancy by giving the landlord notice to end the tenancy the day before the day in the month when rent is due. In this case, in order to avoid any responsibility for rent for April 2012, the tenant needed to provide her notice to end this tenancy before March 1, 2012. Section 52 of the *Act* requires that a tenant provide this notice in writing. Based on the landlord's testimony, the tenant gave her written notice to end this tenancy on February 29, 2012. On this basis, the tenant did not contravene the requirements of either section 45 or 52 of the *Act*.

At the hearing, the landlord testified that she was unable to rent the premises for April 2012 because the tenant left the premises in poor condition. She said that this required extensive cleaning until mid-April 2012 before she could advertise its availability for rent. She said that the rental unit remains unrented as of the date of this hearing.

Section 7(2) of the *Act* places a responsibility on a landlord claiming compensation for loss resulting from a tenant's non-compliance with the *Act* to do whatever is reasonable to minimize that loss. In this case, the landlord was notified more than one month in advance that the tenant was intending to end her tenancy by March 31, 2012. During that period, the landlord testified that she did not place advertisements regarding the expected availability of the rental unit as of April 1, 2012. While she has been placing advertisements in the local newspaper and in a popular rental website since April 15, 2012, she has been unable to rent these premises.

Under these circumstances, I am not satisfied that the landlord experienced rental losses for April 2012 resulting from the tenant's actions. Had the landlord taken action shortly after receiving the tenant's notice to end this tenancy, she may have been able to demonstrate that she incurred losses arising from the condition of the rental suite at the end of this tenancy. However, she has provided no evidence that she attempted to re-rent the premises for April 2012, until April 15, 2012. By then, it would be unlikely that a prospective tenant could be identified for any portion of April 2012. On a balance of probabilities, I find that there must be additional factors other than the tenant's failure to properly clean the premises at the end of this tenancy at work that have led to the landlord's ongoing inability to rent the premises to another tenant. For the above reasons, I dismiss the landlord's claim for unpaid rent for April 2012 without leave to reapply.

Sections 23, 24, 35 and 36 of the *Act* establish the rules whereby joint move-in and joint move-out condition inspections are to be conducted and reports of inspections are to be issued and provided to the tenant. These requirements are designed to clarify disputes regarding the condition of rental units at the beginning and end of a tenancy. The landlord did not provide any oral or written evidence relating to a joint move-in or move-out condition inspection regarding this tenancy. She provided no evidence as to whether she conducted her own condition inspection, produced a condition inspection report or forwarded these reports to the tenant. When disputes arise as to the changes in condition between the start and end of a tenancy, joint move-in condition inspections and inspection reports are very helpful.

Separate from whether the condition of the rental unit changed during this tenancy, the landlord has failed to provide any written evidence to demonstrate that she has actually incurred losses arising from damage that occurred during this tenancy. Her only evidence is by way of her sworn testimony, her photographs and a few comments written on the sheets containing these photographs.

While the landlord's failure to provide evidence that she incurred losses presents problems for her claim for a monetary award, section 37(2) of the *Act* requires a tenant to "leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear." Based on the landlord's photographs, her very limited written evidence and her undisputed sworn testimony, I am satisfied that the tenant did not leave the rental unit reasonably clean and undamaged and that the damage exceeded that which would represent reasonable wear and tear. For this reason, I allow the landlord a monetary award of \$400.00 to clean the premises and remove the materials left behind by the

tenant at the end of this tenancy. This allows the landlord 20 hours for cleaning and removal of debris at a rate of \$20.00 per hour.

As the landlord has been partially successful in this application, I allow the landlord to recover the \$50.00 filing fee for this application from the tenant.

Conclusion

I issue a monetary Order in the landlord's favour in the amount of \$450.00, which allows the landlord to recover \$400.00 for cleaning and removal of materials at the end of this tenancy, and the landlord's \$50.00 filing fee.

The landlord is provided with these Orders in the above terms and the tenant must be served with a copy of these Orders as soon as possible. Should the tenant fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders of that Court.

I dismiss the remainder of the landlord's application without leave to reapply.

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: June 21, 2012

Residential Tenancy Branch