



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

Decision

Dispute Codes: MNSD, MND, FF

Introduction

This Dispute Resolution hearing was set to deal with an Application by the landlord for a monetary order for repairs and cleaning and to justify keeping the security deposit in partial satisfaction of the claim. The application was also to deal with the tenant's claim for the return of the security deposit and a retro-active rent abatement and damages for loss of property, additional moving costs and loss of quiet enjoyment of the suite.

The landlord and the tenant both appeared.

Issue(s) to be Decided

The issues to be determined, based on the testimony and the evidence are:

Is the landlord entitled to retain the security deposit and additional compensation under section 67 of the Act for damages?

Is the tenant entitled to the return of the security deposit and additional compensation under section 67 of the Act for damages?

Background

Landlord's Application

The tenancy began in July 2011 and current rent was \$900.00 per month. A security deposit of \$450.00 was paid. According to the landlord, when the tenant vacated, the unit was left in a state that required cleaning, garbage removal and significant repairs. The landlord's claims included: \$1,500.00 for painting, \$2,000.00 for carpets, \$500.00 for "fixing walls", \$400.00 for the counter top, \$200.00 for a broken door and \$300.00 for a window. The landlord submitted into evidence a copy of an estimate for the repairs, photographs and a list of items abandoned by the tenant. The total amount being claimed by the landlord is \$5,488.00.

No copies of the move-in and move-out condition inspection reports were in evidence and the landlord testified that no written reports were ever completed at the start or the end of the tenancy. However, the landlord gave testimony to support the claim, alleging

that the tenant had abandoned the suite in a bad state requiring a significant amount of repairs and clean-up and made reference to the photos.

The tenant disputed the landlord's testimony and stated that the rental unit was not in a pristine condition at the start of the tenancy. The tenant acknowledged that after she moved out, she was forced to leave some items because the movers refused to handle them due to serious contamination from mice considered to be a health hazard. The tenant testified that the rental unit was left in the state it was solely because of the landlord's failure to completely eradicate mice over-running the premises even after the infestation was reported more than once. The tenant's position is that there is no merit to the landlord's claims for damages and he should not be entitled to monetary compensation.

Tenant's Application

The tenant testified that she was requesting compensation of \$7,836.00 including the return of the security deposit. The tenant testified that she had reported an infestation of mice to the landlord in December 2011 and was merely given mouse traps, that were used and did catch mice, but failed to resolve the problem.

The tenant testified that it was reported to the landlord again and the landlord was told that the traps did result in eliminating the mice and that the infestation was still present.

The tenant stated that, in early January 2012, she was placed in a residential program, but kept in contact with her son, who remained living in the suite and was also in contact with the landlord. The tenant testified that she reported that the mice were still a problem and was repeatedly assured by the landlord by telephone that it was "*all being taken care of*".

The tenant stated that, on February 29, 2012, she had given the landlord written Notice that she was moving out by March 31, 2012. The tenant stated that she retained the rental unit for the purpose of safely storing her possessions until her date of release from the program and until she had obtained another rental unit. The tenant testified that she and the landlord later agreed to extend the tenancy for another month ending on May 31, 2012 and she paid rent to that date.

The tenant testified that, when she completed the off-site program and returned home she expect to find that the mice were completely eradicated as she was led to believe by the landlord. The tenant stated that she was appalled to discover that despite the landlord's assurances, the landlord had allowed the infestation of mice to escalate to the point that the entire unit was over-run with vermin.

The tenant stated that she found mice had burrowed into all of her soft furnishings, ruining mattresses, chairs, destroying stored Christmas decorations, contaminating a wooden dining table and most of the children's toys, as well as personal family mementos. The tenant tearfully described how she was overwhelmed on entering her home to find that the rental unit reeked of the urine and droppings. The tenant testified that papers, books, linens, clothing, photos and virtually everything she owned was contaminated with mice urine and droppings or chewed by the mice. The tenant stated that health officials advised her not to reside in the unit because it was detrimental to her health in the condition she found it. The tenant is requesting a rent abatement of \$900.00 for the final month as the unit was deemed unfit for human habitation.

The tenant testified that the movers refused to handle contaminated possessions and demanded that other salvageable items be disinfected prior to removal. The tenant stated that this added extra costs of \$120.00 for the movers. The tenant submitted a copy of the receipt from the movers showing that the extra cost was imposed. The tenant is seeking \$200.00 in costs for assistance she received with disinfecting and extensive laundering necessary to preserve some of the family's salvageable possessions.

The tenant testified that she was emotionally devastated by the situation. Moreover, she incurred a tangible loss of furnishings and personal possessions. The tenant stated that she would accept partial compensation of \$1,000.00 and is seeking this amount..

Evidence submitted by the tenant included photos of a large number of dead mice in traps and droppings, a written statement and a letter from a social worker with the Ministry of Children and Family Development confirming the state that the rental unit was found in, describing dead mice, putrid smells and stating, "*the place was so unsanitary that it was not suitable for anyone to live there.*".

The landlord testified that the problem with mice was reported to him in January and he dealt with it the best way he could. According to the landlord, traps were set and as far as he knew the problem was resolved. The landlord acknowledged that he was again approached by the tenant's son who complained that the unit was still being over-run with mice. The landlord testified that he personally inspected the unit and he found no evidence of mice.

The landlord admitted that by May 2012 there clearly was a problem with mice, but pointed out that the tenant had left food out and kept the home in an untidy condition and stated that this likely attracted the vermin. The landlord also pointed out that:

- the tenant refused him entry into the unit
- the tenant had not properly set the traps inside the home,

- the tenant had never complained for six months of the tenancy until she approached him at the end of 2011 and
- nobody else in the complex had any problems with mice, including the landlord.

None of the landlord's allegations were confirmed by any evidence from a pest-control expert and the landlord admitted that he never consulted a professional. The landlord testified that, instead, he purchased supplies to take get rid of the infestation himself.

The landlord's verbal testimony blaming the tenant for the mice problem was disputed by the tenant and the tenant also testified that the landlord was not refused entry at any time.

The landlord insisted on providing additional testimony about events that occurred during the tenancy that he felt revealed the tenant's character. This evidence was not considered as it was found to be irrelevant to the issue before me, which dealt solely with monetary claims.

Analysis: Landlord's Claims

With respect to an Applicant's right to claim damages from another party, I find that 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 party 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 steps to mitigate or minimize the loss or damage

For the landlord's monetary claim, the burden of proof was on 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 respondent.

In regard to cleaning and repairs, 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 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 move-in and move-out condition inspection reports.

Sections 23(3) and 35 of the Act dealing with the move-in and move-out inspections, provide 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 had been completed. I find the failure to comply with these two sections of the Act has hindered the landlord's claim for compensation by preventing it from satisfying element 2 of the test for damages.

In addition to the above, although the landlord submitted estimates and photos, I find that the landlord failed to submit sufficient evidence, such as receipts or invoices to prove that the landlord had incurred an actual monetary loss. Therefore the landlord's claim also failed to meet element 3 of the test for damages.

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.

Analysis: Tenant's Claims

With respect to the tenant's claim for the return of the security deposit, I find that a security deposit is always held in trust for the tenant and must be refunded at the end of the tenancy in accordance with section 38 of the Act. The landlord must return the deposit when the tenancy ends, unless the tenant agrees in writing that the landlord can keep it to satisfy a liability or obligation, or unless the landlord successfully obtains an order to keep the deposit for outstanding rent, costs incurred or damage caused by the tenant.

In this instance, I find that the tenant did not give the landlord written permission to keep the deposit. I have determined that the landlord's application seeking a monetary order for loss of rent, cleaning and repairs was not successful and must be dismissed.

Therefore I find that the tenant is entitled to a full refund of the security deposit in the amount of \$450.00.

With respect to the tenant's claim for compensation for a \$900.00 rent abatement for the month of May, 2012, based on the evidence, I accept that the rental unit was not fit for habitation in May, yet the tenant had paid the rent in full..

In regard to the tenant's position that the landlord failed to maintain the building by taking adequate steps to eradicate the vermin problem without undue delay, I find that this responsibility does fall to the landlord under section 32 of the Act which states that:

A landlord must provide and maintain residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law, having regard to the age, character and location of the rental unit to make it suitable for occupation by a tenant.

However, I find that the mere existence of a pest infestation does not constitute proof that either the landlord or the tenant is in violation of the Act and no determination needs to be made as to who is "to blame" for the source of infestation.

But there is no question that, under the Act, once a landlord has been made aware of the presence of vermin, the landlord is responsible for alleviating an infestation through a qualified pest control contractor and must take effective action. I find that, if the landlord fails to take adequate measures to ensure that the rental unit is completely free of rodents the landlord would be in violation of section 32 of the Act.. The Act also requires that a tenant cooperate with the extermination process by not interfering with or impeding the process.

Although it is evident that the landlord did take some initial steps to deal with the mice, I find that the landlord failed to adequately inspect the unit to make sure the problem was resolved. I find that, after the landlord received subsequent reports that the mice were still there, even after the landlord's intervention, the landlord failed to intensify the pest-control methods by contacting qualified professional exterminators. In failing to do so, I find that the landlord did not comply with the Act.

As a direct result of the landlord's failure to comply with the landlord's responsibilities under the Act, I find that the tenant suffered the following compensable losses:

- \$900.00 for being unable to reside in the rental unit or safely store household possessions in the unit during the month of May 2012.
- \$1,000.00 partial compensation for personal possessions ruined or compromised by a severe and prolonged mice infestation.
- \$120.00 compensation for additional moving costs charged by the movers that was attributable to mice contamination of the tenant's personal property.
- \$200.00 for costs of cleaning and salvaging items soiled by the mice.

I find that each of the above monetary claims, have successfully met all elements of the test for damages and the tenant is therefore entitled to compensation.

Conclusion

Based on the evidence and testimony, I find that the tenant is entitled to total monetary compensation of \$2,670.00, comprised of \$450.00 for the return of the security deposit, \$900.00 rent abatement for May 2012, \$1,000.00 partial compensation for loss of household and personal possession, \$120.00 for the extra moving costs and \$200.00 compensation for cleaning and laundering expenses. The remainder of the tenant's application is dismissed.

I hereby issue a monetary order to the tenant for \$2,670.00. This order must be served on the landlord in accordance with the Act and if necessary can be enforced through Small Claims 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: July 09, 2012.

Residential Tenancy Branch