



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

Decision

Dispute Codes:

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* for damages.

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

Background and Evidence

The landlord testified that the tenancy began approximately 9 years ago and the current rent was \$2,475.00. A security deposit of \$1,125.00 was paid. The tenancy ended pursuant to a Two Month Notice to End Tenancy for Landlord's Use so that the landlord could move in once the unit was sufficiently renovated.

The landlord was seeking compensation for damage and loss under the Act including cleaning costs, pro-rated rent for over-holding, expenses for construction delay and the landlord's living costs that she incurred due to the delay caused by the tenant, for a total claim of \$1003.20, including the \$50.00 cost of filing the application.

The landlord testified that the tenant had left ashes in the fireplace and crumbs & debris behind the refrigerator. The landlord is seeking cleaning costs of \$82.88 for two hours of cleaning at \$37.00 per hour. A copy of a cleaning invoice was in evidence.

The tenant's position was that the unit was left in a reasonably clean state as required under the Act. The tenant also pointed out that the unit was subject to ongoing construction at the time he was vacating the unit.

The landlord was seeking pro-rated rent because of the fact that the tenant was not fully moved out for a period of 2 or 3 days after April 30, 2012, which was to be the move-out date evidently specified on the landlord's Two Month Notice to End Tenancy for Landlord's Use. The landlord is seeking 2 days of prorated rent in the amount of \$165.00 for the tenant's actions in failing to vacate and over-holding past the end of the tenancy. No copy of the Two-Month Notice was in evidence. The landlord had submitted a copy of a contractor's statement dated May 12, 2012 into evidence. A notation on the document stated, "*your building was not vacated as agreed when we arrived to commence work on May 1st, 2012.*"

The tenant denied over-holding the unit beyond May 1. The tenant stated that he had essentially moved out, but there were a few items still left in the unit until midnight May 1, 2012. The tenant testified that he was under the impression he had until midnight May 1, 2012 to vacate because of information he was given by the Residential Tenancy Branch. The tenant admitted that some of his packed possessions were stored for pick-up close to the alley way after May 1, 2012, and they were stacked in an orderly manner outside. The tenant testified that this did not impede the renovation work. The tenant stated that the only reason he came back to the site after May 1, 2012, was to address demands made by the landlord insisting that he return to remove the compost pile to and clean out the fireplace, before she would consider returning any portion of his security deposit.

The landlord is seeking compensation for extra expenses stemming from to a construction delay that she testified resulted directly from the tenant's actions. The landlord referred to the May 12, 2012 statement from the contractor who apparently charged the landlord a 4-hour minimum for the contractor at \$50.00 per hour and a four-hour minimum for the contractor's helper at \$30.00 per hour for May 1, 2012. The landlord pointed out that the contractor also billed the landlord for half a bin of garbage removal that the contractor attributed to the tenant at a cost of \$120.00 and another \$60.00 for 2 hours of labour to dig out the existing compost and load "*tenant-related*" garbage. The total claim for the contractor charges was \$500.00, which is being claimed against the tenant. The contractor's May 12, 2012 invoice also contained a notation that the garage was full again on the morning of May 2, 2012 and the tenant was still moving out.

The tenant disputed this claim and stated that on May 1, 2012, most of his possessions were already gone. In any case, according to the tenant, the contractors continued to do work on the day-in-question and he stayed out of their way. The tenant objects to being blamed and charged for a half a day work by the contractor because he witnessed that workers were engaged in tasks relating to the landlord's renovations independent of his activities.

In regard to the allegation that his possessions in the garage had held up the renovations on May 2, the tenant stated that his possessions were packed and ready to transport and had intentionally been placed out-of-the way so that the workers would not be obstructed.

With respect to the alleged garbage and compost removal, the tenant stated that garbage collection was not separately charged and was always part of the tenancy, not subject to separate billing. The tenant also disagreed with the landlord's position that he is responsible under the Act or agreement for removal of the compost from the yard.

The landlord stated that the tenant's failure to vacate the property on the agreed-upon date ultimately delayed her move-in date, thereby costing her extra accommodation expenses for two additional days, for which she is claiming \$200.00. The landlord submitted a "Rental Extension Receipt" for two days from May 15, 2012 until May 17, 2012 to support the claim.

The tenant denied that he was in any way responsible for delaying the date that the rental unit was ready for the landlord to move in. According to the tenant, he had no control over any of the factors that may have impacted what date the landlord chose to move into the unit.

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.

I find that in order to justify payment of damages under section 67, the Applicant would be required to prove that the other party did not comply with the Act and that this non-compliance resulted in costs or losses to the Applicant, pursuant to section 7.

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 regard to the landlord's claim that the tenant was over-holding and remained living in the unit beyond April 30, 2012, I find as a fact that the tenant was still in the process of vacating the unit on May 1, 2012, but likely had his possessions grouped into areas within the rental unit where they remained until midnight on May 1.

I find the landlord's allegation that the tenant's presence made it impossible for the contractors to proceed was successfully challenged by the tenant who testified that some work on the unit proceeded without interruption in his presence. I find that I must assign little weight to the supporting evidence submitted in the form of a written invoice with containing commentary solicited from the contractor. I find that this document is not signed and the person who issued it was not available for the tenant to cross examine. Moreover, the statement does not specifically testify that no work could be done on that particular day, only that the landlord was charged a 4-hour minimum because the building was not completely vacant. The invoice/statement goes on to detail other work that was completed, for which the landlord had been charged including removal of garbage that the contractor attributed to the tenant and compost in the yard.

Given the above, I find that the landlord's claim for \$500.00 for added construction costs was not sufficiently proven to satisfy all elements of the test for damages and must be dismissed.

With respect to the issue of over-holding, I find that the tenant freely admitted to the fact that he did not vacate completely until May 1, 2012 at midnight. I find that this is clearly a violation of the Act. However, to satisfy the test for damages, the landlord must also prove that a genuine monetary loss was incurred solely because of the violation. In this instance, I find that the landlord testified that the unit was not being utilized by the landlord who was living elsewhere at the time. I also find as a fact that the tenant's presence in the unit did not prevent the landlord from collecting rent from another resident, being that the unit was not going to be rented out. I find that the landlord has not sufficiently proven that a tangible monetary loss was incurred. Therefore, I find that the claim for pro-rated rent fails element 3 of the test for damages and must be dismissed.

I accept the testimony of both parties that the tenant still had possessions stored on the property for a short period after July 1, 2012 awaiting pick-up by the tenant. While the tenant's actions in this regard fail to comply with the Act, I find that any loss incurred by

the landlord because of this would be negligible, whether the items remained there for one or more days. The items had been removed from inside the unit to the garage and this fact was confirmed in the contractor's statement which observed that, on May 2, 2012, "the garage was full". I do not accept the landlord's allegation that the presence of the tenant's property in the garage completely shut down all renovation work on the entire site to justify the compensation being claimed.

In regard to the claim for cleaning, I find that section 37 of the Act states that, when a tenant vacates a rental unit, the tenant must leave it reasonably clean and undamaged, except for reasonable wear and tear.

In this instance, I accept the landlord's testimony that the fireplace contained some ashes and that there was likely grime behind the refrigerator. I also accept that the landlord paid cleaners for two hours of labour at a cost of \$82.88. The company invoice confirmed that unspecified cleaning was completed in the unit on May 8, 2012. Based on the landlord's own evidence, I find that the renovation contractors had already been working in the unit for a period of one week before the cleaning session. In any case, even with the condition issues described by the landlord, I find that these lapses were relatively minor and that the unit was left in a reasonably clean state as required under the Act. Therefore I find that the tenant was not in violation of the Act in this respect and this portion of the landlord's claim failed element 2 of the test for damages.

I find it difficult to accept the landlord's claim that that the tenant's failure to vacate the property on the agreed-upon date triggered a chain of events beginning with a delay in the start of the renovation work, which pushed back the planned completion date, which, in turn, prevented the landlord from moving into the unit on May 15, 2012, ultimately resulting in two days of additional charges for accommodation for May 16 and May 17, 2012. I find renovation and repair projects are prone to unexpected delays that may stem from an infinite spectrum of possible causes. For this reason, I find that the landlord has not sufficiently met the burden of proof to prove that the tenant's contravention of the Act was the sole cause of additional, and apparently unforeseen, accommodation costs.

Given the above, I find that the landlord's monetary claim has not been sufficiently proven and must be dismissed.

Conclusion

Based on the testimony and evidence presented during these proceedings, I find that the landlord is not entitled monetary compensation and I dismiss the application in its entirety without leave to reapply.

The landlord is required to refund the tenant's security deposit in full and I hereby issue a monetary order in favour of the tenant for \$1,164.85 comprised of the original deposit of \$1,125.00 and \$39.85 interest. 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.

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 16, 2012.

Residential Tenancy Branch