



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 that was not refunded by the landlord and a refund for over-paid rent. The landlord and the tenant both appeared.

Issue(s) to be Decided

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.

Background

The tenancy began in February 2010 and the current rent was \$3,000.00 per month. A security deposit of \$1,500.00 and pet damage deposit of \$1,500.00 was paid.

The tenancy agreement in evidence was for a two-year fixed term ending on January 31, 2012 and the rent was payable on the first day of each month. The tenant testified that an additional fixed-term agreement was signed after January 31, 2012, but no copy of this agreement was in evidence.

No move-in condition inspection report or move-out condition inspection report was completed by the parties. The tenancy ended on May 2, 2012

The tenant was claiming the return of the tenant's security and pet-damage deposits in the amount of \$3,000.00. The tenant testified that the new fixed-term agreement required payment of rent mid-month and permitted them to vacate mid-month. The tenant testified that they had paid rent for the full period from mid-April until mid-May but vacated on May 2, 2012 and feel that they are entitled to a rent refund of \$1,250.00 for the first half of May 2012.

The landlord disagreed with the tenant's claim for the rent refund and feel that they are owed an additional 2 days compensation for the tenant over-holding.

The landlord is also requesting to keep the tenant's \$1,500.00 security deposit and the tenant's \$1,500.00 pet-damage deposit and a monetary order for \$1,741.00 for damage to the suite. The landlord explained that no work has proceeded yet as they are awaiting the outcome of the hearing.

The landlord did not submit any move-in and move-out condition inspection reports signed by both parties to confirm the before and after condition of the rental unit.

However, the landlord submitted evidence in the form of photographs purporting to show damage to various areas of the suite. According to the landlord the basement carpet, which was new at the start of the tenancy, was ruined by the tenants and could not be restored through cleaning. The landlord testified that the entire unit had to be repainted as there was significant damage, improper attempts to repair holes and scuffing on every wall.. The landlord submitted a "quotation" dated May 7, 2012 for basement carpet replacement and interior painting of the walls totaling \$4,491.20.

The tenant disputed the landlord's claim and stated that the photos were misleading as they featured repeated close-up views of each small blemish in the suite. The tenant testified that the carpet did not need to be replaced but their offer to clean the carpets was declined by the landlord. The tenant testified that they were also willing to patch any scuffs or punctures in the drywall and do touch-up painting but this was also refused by the landlord. The tenant disputed the landlord's testimony that they had left the unit in a state that required total repainting of the entire unit. The tenant acknowledged that there were some condition issues, but stated that these were in the realm of normal wear and tear. The tenant stated that they were originally willing to permit the landlord to keep \$500.00 from their security deposit in full compensation for all cleaning and damages.

Analysis:

Tenant's Claim

I find that a security and pet damage deposit consist of funds held in trust for the tenant by the landlord. The tenant is entitled to a refund or a credit towards any monetary award ordered to be granted to the landlord. In this instance, I find that the deposits being held on behalf of the tenant total \$3,000.00.

I find that the tenant's claim for a refund of overpaid rent is complicated by the fact that their Notice to vacate ended the tenancy as of the end of the month, but the payment of rent under the agreement was apparently due mid-month for each period ending the following mid-month. The tenant had apparently paid rent until mid May 2012. This type of arrangement is not possible under the Act. Under the Act, the rent is due on the

first day of the rental period and any tenancy must end the day before the day rent is due under the agreement, on one month notice. Where there is a fixed term, the tenancy ends on the expiry date of the fixed term. I find that no copy of the subsequent fixed term tenancy agreement between these two parties was in evidence. It isn't clear whether the parties intended that the tenancy and the payment of rent run from the first day of each month or from the middle of each month. If the contract required payment mid-month, then the tenants would not be at liberty to give notice to leave effective April 30, 2012 and certainly would not be entitled to a partial refund. Given the above, I find that the tenant has not succeeded in establishing that they are owed a rent refund regardless of the due date for payment of rent under the missing tenancy agreement.

Analysis Landlord's Claim

With respect 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 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

In this instance, 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. (my emphasis).

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 I find that in this instance there were no inspection reports completed in accordance with the Act. The fact that the landlord failed to comply with the Act by completing the move-in and move out condition inspection reports with the tenant's participation, has impeded the landlord's ability to verify the condition of the unit.

That being said, I find it evident that the unit did require some cleaning and minor repairs to bring the condition up to the standard of being "reasonably clean" and livable.

However, with respect to the landlord's claim for the cost of new carpeting, I find that, in order to satisfy element 4 of the test for damages, the landlord was obligated to try to clean the carpet or allow the tenants to attempt to bring it back to a reasonably clean condition, before replacing it. I find that the landlord did not submit any verification from a carpet specialist that this flooring had to be replaced because it was beyond cleaning. In any case, I find that the landlord has only submitted an estimate for the cost and has not yet incurred any monetary loss to replace the carpet.

With respect to the cost of repainting the unit, I find that, although the landlord has presented clear evidence that some areas would need to be patched and painted, the landlord has not sufficiently proven that the entire unit would need to be completely repainted. Element 4 of the test for damages requires the person claiming damages to take reasonable steps to try to minimize the costs. The landlord also could have permitted the tenants to do some of the work.

I also find that the estimate submitted by the landlord does not include a detailed breakdown of materials and labour nor what specific repairs will be completed. I find that the landlord has not yet completed the repairs and has not incurred any costs.

Moreover, awards for damages are intended to be restorative, meaning the award should place the applicant in the same financial position he or she would be in, had the damage not occurred. Where an item has a limited useful life, it is necessary to take into account the age of the damaged item and reduce the replacement cost to reflect the depreciation of the original value. In order to estimate depreciation of a replaced item, reference to Residential Tenancy Policy Guideline 40 is necessary to accurately assess the normal useful life of a particular item or finish would be. In this instance, the average useful life of interior paint is set at 4 years and the duration of this tenancy had been over two years.

Given the above, I find that the landlord has not submitted sufficient evidence to support the full amount of the monetary claim. But I find that some compensation is warranted

for general cleaning, carpet cleaning, paint touch up and repairs and I set the amount at \$350.00.

Conclusion

I find that the tenant is entitled to \$3,050.00 comprised of \$1,500.00 security deposit refund, \$1,500.00 pet damage deposit refund and the \$50.00 cost of the application.

I find that the landlord is entitled to compensation of \$350.00 for estimated costs of cleaning and repairs.

In setting off these two awards, I find that there is a remainder of \$2,700.00 in favour of the tenant and I hereby grant the tenant a monetary order for this amount to the tenant. This order must be served on the landlord in accordance with the Act and if necessary can be enforced through Small Claims Court.

The remainder of the landlord's application and the tenant's application are 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 24, 2012.

Residential Tenancy Branch