



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 rent owed, 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 damages for medical problems allegedly stemming from the actions of the landlord. The landlord and the tenant both appeared.

Issue(s) to be Decided: Tenant's Application

The issues to be determined, based on the testimony and the evidence, is whether the tenant is entitled to monetary compensation under section 67 of the *Act* for damages.

Issue(s) to be Decided: 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.

Background

The tenancy began on March 1, 2008 and the current rent was \$298.00 per month. A security deposit of \$200.00 was paid.

Both a move-in condition inspection report and a move-out condition inspection report were completed and signed by the parties. The tenancy had ended when the landlord was granted an Order of Possession on July 31, 2012. The tenant testified that she actually moved out a few days before the end of July 2012.

The tenant was claiming damages for a health condition that she attributes to the installation of commercial carpeting in the common areas. According to the tenant, she began to have serious allergic symptoms when the carpet was installed. The tenant submitted a doctor's note verifying that :

"The above person has medical symptoms related to environmental exposure, possibly in her own apartment. This impacts her health"

According to the tenant, although the note appears to state that the source was possibly in the tenant's own rental unit, the word "apartment" was referring to the apartment building including the common areas, where the new carpeting had been installed. The tenant testified that her symptoms grew worse until she felt she could no longer live in the building. According to the tenant, other residents also experienced problems with their health after the installation of carpet in December 2011 and January 2012.

The tenant acknowledged that she received a written notification from the landlord stating that new carpeting would be installed in the common areas and inviting residents who may have concerns to contact the landlord with their issues. The tenant testified that she did not express any concerns at that time as she was not aware that this would pose a health issue. The tenant stated that this was the reason she did not complain until later on when her symptoms appeared. The tenant testified that her complaints were made verbally and were not put in writing. The tenant's position is that the landlord's use of commercial grade carpeting, instead of "*residential*" carpeting placed the resident's health at risk and caused a serious debilitating condition for the tenant. The tenant pointed out that her symptoms began to subside as soon as she vacated the building. The tenant is seeking compensation of \$5,000.00.

The landlord testified that the carpeting used, although a commercial grade, posed no medical risks to people. The landlord stated that they were not made aware of the tenant's particular sensitivity to the materials in the carpet prior to the installation. The landlord disputed the alleged connection between the installation of the carpets and the tenant's spectrum of symptoms and any of the other health issues she reports. The landlord does not believe that any amount of compensation to the tenant is warranted.

With respect to the landlord's claim for rent, the landlord testified that the tenant failed to pay her rent in full and is in arrears in the amount of \$196.00 for July 2012. The tenant did not dispute this and stated that she had agreed that the landlord could retain her security deposit in payment of this debt.

The landlord is also claiming reimbursement for 4 hours cleaning costs in the amount of \$100.00 which apparently represents labour costs of having an on-site manager do the final clean-up. However, a copy of the move-out condition inspection report in evidence indicates that most areas were left in "fair" condition. The maintenance manager testified that extra cleaning was required behind the refrigerator, which was on wheels, and the stove hood. The "*Security Deposit Return Form*", which was signed and initialed by the tenant, indicated that the tenant agreed to cleaning costs of \$100.00, drapery cleaning costs of \$72.00 and the repair of a refrigerator door handle in the amount of \$55.00. No invoices or receipts were submitted for the costs, but the landlord

pointed out that the tenant had agreed to the fees as stated and signed her consent. Landlord testified that the cost of cleaning the drapes is a standard charge.

The tenant denied that she had ever agreed to pay any of the costs listed and claimed that the form was blank when she signed it. The tenant testified that she was also in a confused state of mind due to her medical conditions. The tenant stated that she left the unit perfectly clean when she moved out and disagrees with the charges.

Analysis:

Tenant'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 tenant, 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.

I find that the tenant's claim for compensation does not meet all elements of the test for damages. While I accept that the tenant has suffered significant medical problems that she attributes to the new carpeting, I find that she would need to prove that the landlord violated a section of the Act by installing this carpeting, in order to satisfy element 2 of the test for damages.

Section 32 of the Act imposes responsibilities on the landlord who must provide and maintain the 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. I find that the tenant did not submit sufficient evidentiary proof that the landlord failed to comply with the law in regard to local health, safety and housing standards with respect to the carpet installation.

Given the above, I find that the tenant's application for monetary compensation must be dismissed.

Analysis Landlord's Claim

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 the landlord did comply with the Act. I find that the move-out condition inspection report confirmed that the rental unit was left in a reasonably clean condition. I find that this report is contradicted by some of the information contained on the landlord's "*Security Deposit Return Form*". In particular, I find that the claim for 4 hours of cleaning on this form is not consistent with data contained on the move out condition inspection report. While I accept that the landlord's staff likely did spend this amount of time doing a final clean-up in preparing the unit for a new occupant, I find that this does not prove that the unit wasn't left in a "reasonably clean" state, which is the standard imposed by the Act. "Reasonably clean" is not necessarily as high as the standard a landlord may feel is required to show the unit in its best light to prospective new tenants.

With respect to the cost of cleaning the draperies, I find that it is a valid expectation under the Act that draperies be cleaned at the end of a tenancy. I find that the monetary figures on the landlord's Security Deposit Return Form, do not hold the same evidentiary weight as a genuine invoice would. The "charges" do not feature a Purchase Order or HST # and no additional supportive documentation was submitted to verify these cleaning costs, which were challenged by the tenant. For this reason, I find that the landlord is entitled to estimated cost of \$36.00 for cleaning the drapes.

With respect to the damaged refrigerator door handle, I find that appliance repairs are a landlord's responsibility under the Act and any agreement between the parties that circumvent the Act will not be enforced under sections 5 and 6 of the Act.

Given the above, I find that the landlord is entitled to compensation of \$257.00 comprised of \$196.00 for rental arrears, \$36.00 for the cost of the draperies and \$25.00 for half of the cost of the application.

Conclusion

I find that the tenant is not entitled to monetary compensation and hereby dismiss the tenant's claim in its entirety without leave.

I find that the landlord is entitled to compensation of \$257.00 for rent, cleaning of draperies and a portion of the cost of the application. I order that the landlord retain the tenant's security deposit and interest of \$201.25 in partial satisfaction of the claim, leaving an outstanding amount of \$55.75 still owed to the landlord.

I hereby grant the a monetary order to the landlord for this amount. This order must be served on the tenant in accordance with the Act and if necessary can be enforced through Small Claims Court.

The remainder of 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: August 13, 2012.

Residential Tenancy Branch