Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

Decision

Dispute Codes: MND, MNR, MNDC

Introduction

This Dispute Resolution hearing was set to deal with an Application by the landlord for a monetary order in compensation for rent, loss of rent, cleaning and repairs. Both parties appeared and gave testimony.

Issue(s) to be Decided

Is the landlord entitled to monetary compensation under section 67 of the *Act* for damages or loss?

Background and Evidence

The landlord testified that the tenancy began in 2009. The rent was $535.00. According to the landlord, no security deposit had been paid. However, the tenant stated that he paid a security deposit of $250.00. In a decision from a previous dispute resolution hearing held on May 3, 2012, the dispute resolution officer had accepted that a security deposit of $250.00 was paid by the tenant. The landlord testified that there was no move-in condition inspection report completed at the start of the tenancy.

The decision issued for the previous dispute resolution hearing, showed that the parties had reached a mutual agreement that the tenancy would end on May 31, 2012.

However, the tenant failed to pay rent on May 1, 2012 and vacated the rental unit before May 5, 2012. The landlord testified that the unit was left in an unclean, damaged state.

The tenant stated that he had started to vacate the unit on May 3, 2012 because the landlord had turned off the water to his suite. The tenant testified that he had removed most of his possessions, with the intent on returning on May 5, 2012 to retrieve his remaining possessions and do the final clean-up. The tenant testified that, on the morning of May 5, 2012, he found that the landlord had removed all of his remaining possessions and had dumped them in front of the door of his new residence. The tenant's position is that he was deprived of the opportunity to clean the unit by the landlord and therefore should not be held responsible for cleaning the unit.

The landlord denied that the tenant's water was turned off and pointed out that the controls and main shut-off valve is located inside the tenant's unit. The landlord's position is that the tenant vacated the unit without proper notice and failed to pay rent

owed for May. The landlord is claiming $535.00 for the rent owed and loss of $267.50 rent for half of June 2012.

The landlord testified that two attempts were made to schedule a move out condition inspection with the tenant; one for May 6, 2012 and one for May 7, 2012. The landlord testified that the tenant failed to cooperate and the inspection was done in the tenant's absence on May 7, 2012. A copy of the condition inspection report was in evidence.

The tenant disputed the landlord's version of events and stated that he received a single Notice scheduling the move out condition inspection and attended on May 6, 2012 at the appointed time. The tenant testified that the landlord did not show up at all. The tenant denied ever being served with the second Notice of Final Opportunity to Schedule a Condition Inspection for May 7, 2012.

The landlord testified that the tenant had not left the unit in a reasonably clean condition as required by the Act. The landlord made reference to the move-out condition inspection report and some of the photographs in evidence verifying that portions of the rental unit were left not cleaned. The landlord disputed the tenant's allegation that the tenant was deprived of the opportunity to clean the unit before leaving. The landlord is claiming reimbursement for the cleaning costs.

The landlord testified that the tenant had also intentionally caused flooding of the unit by disengaging the water supply hose from the toilet tank. The landlord testified that this required special clean-up and drying by a specialist. Photos of the flood damage and a photo of the disconnected water supply hose were in evidence. A copy of the invoice from the flood remediation contractor charging $3,778.66, was also in evidence. Reimbursement for the entire amount is being sought by the landlord.

The landlord testified that, due to the flooding caused by the tenant, the ruined carpet had to be replaced at a cost of $2,800.00.

The tenant denied tampering with the plumbing and stated that he was not the cause of the water damage to the suite.

The landlord was claiming compensation for the replacement of a refrigerator, a toilet, 2 sets of blinds, paint and hardware items. The landlord had submitted photos of each area of damage in the suite, along with the associated invoices and receipts for the purchase of materials and supplies. The amount being claimed for repairs alone is $7766.35. The landlord is also seeking reimbursement for the $19.81 spent on printing the evidence photos. The total claim, including the $535.00 rental arrears and $267.50 loss of rent for June is $8,588.66 plus the $100.00 cost of the application.

With respect to the repairs to the unit, NOT related to the flooding, the landlord's evidence showed broken tiles, loosened threshold, split trim, splintered baseboard and door frames, missing and broken light fixtures, damaged counter, cabinets, walls, blinds and door, compromised electrical outlets, fans, thermostat and switches, a broken shower curtain rod and damage to the toilet.

The tenant denied causing any of the above damage. The tenant argued that much of the damage pre-existed his tenancy and also pointed out that the landlord had promised to make many needed repairs during the tenancy, but failed to fix anything. In addition, the tenant stated that certain items were worn-out as they had reached the end of their useful life and the damage resulted from normal wear and tear.

Analysis

With respect to the rent owed in the amount of $535.00, I find that section 26 of the Act states that rent must be paid when it is due, under the tenancy agreement. Through testimony from both parties it has been established that the tenant did not pay the rent when it was due on May 1, 2012 and the landlord is entitled to $535.00 for rent.

In regard to the claim for $267.50 loss of rent for June, 2012, I find that the landlord's claim for loss of rent was related to the amount of time required to do repairs to the unit that delayed re-rental until mid June.

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 is on the claimant, that being 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.

I find that, although the tenant did not give adequate notice under the Act, to vacate the unit, the landlord's loss of rent for June was caused by the ongoing renovations.

I find that section 32 of the Act contains provisions regarding both the landlord's and the tenant's obligations to repair and maintain. 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, and having regard to the age, character and location of the rental unit to make it suitable for occupation by a tenant. A tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the residential property to which the tenant has access. While a tenant of a rental unit must repair damage to the rental unit caused by the actions or neglect of the tenant, this section of the Act specifies that a tenant is not required to make repairs for reasonable wear and tear.

Section 37 (2) of the Act states that when a tenant vacates a rental unit, the tenant must leave the unit reasonably clean, and undamaged except for reasonable wear and tear.

Based on the evidence, I do accept that the tenant did not leave the rental unit reasonably clean as required by the Act. I find that the tenant did not offer sufficient proof to confirm that he was prevented from returning to do the final clean-up. I find that the landlord is entitled to be compensated for cleaning costs of $180.00, representing 12 hours of labour at $15.00 per hour.

With respect to the extensive repairs for damage to the unit that delayed re-rental, I find that the tenant's role in causing damage is normally 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 the move-in and move-out condition inspection reports featuring both party's signatures.

Section 23(1) on the Act requires that the landlord and tenant together must complete a move-in inspection to verify the condition of the rental unit on the day the tenant is entitled to possession of the rental unit or on another mutually agreed day.

Both sections 23(3) for move-in inspections and section 35 for the move-out inspections state that the landlord must offer the tenant at least 2 opportunities, as prescribed, for the inspection. Part 3 of the Regulations goes into significant detail about the specific obligations regarding how and when the Start-of-Tenancy and End-of-Tenancy Condition Inspections and Reports must be conducted.

In this situation, I find that the landlord failed to comply with the Act in regard to the statutory requirement to conduct a move-in condition inspection report signed by both parties, and the requirement to give a copy of this to the tenant.

In regard to the landlord's allegation that the tenant did not cooperate with the landlord's attempt to schedule a move-out condition inspection, the Act contains provisions that anticipate such situations. In particular, section 17 of the Regulation details exactly how the inspection must be arranged as follows:

> (1) A landlord must offer to a tenant a first opportunity to schedule the condition inspection by proposing one or more dates and times.

(2) If the tenant is not available at a time offered under subsection (1),

> (a) the tenant may propose an alternative time to the landlord, who must consider this time prior to acting under paragraph (b), and
>
> (b) the landlord must propose a second opportunity, different from the opportunity described in subsection (1), to the tenant by providing the tenant with a notice in the approved form.

(3) When providing each other with an opportunity to schedule a condition inspection, the landlord and tenant must consider any reasonable time limitations of the other party that are known and that affect that party's availability to attend the inspection.

The Act states that the landlord must make the inspection and complete and sign the report without the tenant if:

(a) the landlord has complied with subsection (3), and

(b) the tenant does not participate on either occasion.

In this instance, the tenant acknowledged that at least one of the notices for inspection was received on the approved form giving the tenant a final opportunity to participate in the move out condition inspection. However, each party alleged that the other failed to show up on May 6, 2012 for the inspection. In any case, even if I accepted the content of the move-out report, the fact that there was no move-in report, renders the evidentiary weight of the move-out condition inspection report of minimal value.

Although, based on the photographic evidence, I find that the rental unit was in a seriously damaged state at the end of the tenancy, element 2 of the test for damages requires that the landlord provide proof that this damage or loss happened solely because of the actions or neglect of the tenant in violation of the Act or agreement.

Under the Act a tenant is not liable for pre-existing damage to a unit, nor for breakdown due to normal wear and tear. The tenant has testified that the damage pre-existed and occurred due to normal wear and I find that the landlord was not able to provide sufficient evidence to prove otherwise.

With respect to the malfunction or failure of appliances, plumbing fixtures, infra-structure concerns or electrical system concerns, under the Act, a landlord is normally responsible for repair and maintenance of these. Therefore, if any of the above circumstances apply to this situation, I would have to determine that there was no proven violation of the Act by the tenant.

If it was verified that a tenant intentionally vandalized or abused the equipment, facilities or premises, then compensation to the landlord could be justified. However, I find that the disputed verbal testimony offered by the landlord in this case, did not sufficiently meet the burden of proof to show the tenant had wilfully caused the damage.

For this reason, I findt the landlord's claim for damages to the suite must be dismissed.

I find that the landlord is not entitled to $19.81 for the cost of processing the photographs used as evidence because, with the exception of the cost of filing the application, a claim for reimbursement of administrative or other costs for preparing for the Dispute Resolution Hearing, are not compensable expenditures covered under any provision of the Act. Therefore this portion of the application must also be dismissed.

Accordingly I find that the landlord is entitled to be compensated in the amount of $815.00 comprised of $535.00 for rent owed, $180.00 for cleaning costs and $100.00 for the cost of the application.

Conclusion

Based on the testimony and evidence I find that the landlord is entitled to retain the tenant's $250.00 security deposit leaving a balance owed to the landlord of $565.00.

I hereby grant a monetary order in favour of the landlord for $565.00. This order must be served on the tenant and may be enforced through Small Claims if not paid.

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: September 04, 2012.

Residential Tenancy Branch