



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

Decision

Dispute Codes: 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.

The landlord had amended the application to increase the claim from \$5,365.50 for rent owed to \$6,999.00 including \$1,633.00 for damages to the suite.

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 June 2010. The rent was \$1,533.00, but was reduced in a previous dispute resolution hearing due to the landlord's failure to maintain the unit and the current rent was therefore, \$1,083.00.

The landlord testified that there was no move-in condition inspection report completed at the start of the tenancy because the tenant moved in at the same time the previous tenant was moving out. The landlord testified that no move out condition inspection was completed either.

The landlord testified that the tenant failed to pay rent for May 2012 and June 2012. The landlord testified that, as far as they knew, the tenant vacated the unit on July 11 2012. The tenant testified that he actually vacated on July 5, 2012, pursuant to an order from Supreme Court. The landlord is claiming rental arrears for May and June 2012.

The landlord testified that the unit was left in an unclean, damaged state and the landlord is claiming compensation for cleaning, repairs and loss of rent for July 2012. Submitted into evidence were photos, written communications, court documents, copies of a previous decision, receipts and photocopies of cheques.

The tenant conceded that he owed rent for May and June in the amount of \$1,083.00 for each month for a total of \$2,166.00.

However, the tenant disputed that he owed the landlord any rent beyond July 5, 2012 and took the position that he would only owe pro-rated rent for the five days. The tenant testified that the landlord allowed another person to reside in the unit as shown in some of the landlord's photographs that were submitted into evidence.

The landlord testified that the tenant had damaged the rental unit and supported this testimony with photos clearly showing damage to the doors and other areas of the unit. The landlord stated that the receipts verify all purchases related to the damage shown in the photos. The landlord also submitted an invoice from a contractor dated July 11, 2012 that billed the landlord for \$1,000.00 and listed various jobs that were to be done. There was no breakdown with respect to specific jobs, nor the amount of time spent or the hourly rate on this invoice. The landlord also submitted a copy of a cheque dated July 13, 2012 for \$1,000.00 to the contractor.

The landlord pointed out that there were items left in the unit that had to be disposed of and included receipts and invoices totaling \$448.00. The landlord made reference to the photos showing items in piles outside the home.

The tenant disputed that the items shown in the photos were left there by the tenant and pointed out that they were located in a common area shared by other units. The tenant also testified that some of the furnishings were already in the unit when he took possession at the start of the tenancy, and he merely left these items. The tenant does not agree with any part of the claim for garbage removal.

With respect to the cleaning, the charges relating to the cleaning was integrated in the contractor's invoice is for the \$1,000.00 flat fee and, as noted previously in this decision, there is no detailed breakdown on the invoice. However, the landlord estimated the time spent on cleaning to be at least 8 hours at \$25.00 to \$30.00 per hour. The landlord acknowledge that a move out inspection was not completed, but made reference to photos that showed a dirty oven and other areas that he felt were not left in a reasonably clean state.

The tenant testified that the unit was left in a cleaner state than when he moved in and took the position that it was left reasonably clean in compliance with the Act. The tenant stated that some of the finishes, such as the caulking in the bathroom and rust on the stove could not be made to look clean. The tenant conceded that some minor cleaning may have been necessary, but not more than 3 hours at most.

In regard to the repairs, the landlord testified that some improvements, including a new wood floor had been completed on the unit during this tenancy. The landlord testified

that, however, the tenant left holes in several doors, destroyed a counter-top, damaged the faucets and marked up the new flooring. The landlord testified that the tenant inflicted intentional damage on the unit being that no security deposit was being held by the landlord. The landlord did not agree with the tenant's position that the damage pre-existed his tenancy. The landlord pointed out that if such damage was evident, they would have addressed any of these condition issues at the time their renovations were being done on the floors, plumbing and other deficiencies in January 2012. The landlord testified that the damage found in the unit occurred more recently.

The landlord made reference to receipts and the contractor's invoice showing the cost of repairing the damage and seeks compensation based on the amounts shown.

The tenant testified that the rental unit had serious maintenance issues from the beginning and was in such a deteriorated state that the tenant successfully obtained an order for a rent abatement and monetary compensation based on the fact that there were serious condition issues considered to be a violation of section 32 of the Act. The tenant pointed out that no move-in nor move-out condition inspection reports had been done. The tenant did not agree with any of the landlord's claims for repairs to the unit.

Analysis

With respect to the rent owed, 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, June 1, 2012 and for the five days that the tenant resided in the unit in July 2012. I find that the landlord is therefore entitled to \$2,344.03 for rental arrears.

In regard to the claim for the remainder of the income that was lost in July, 2012, I find that the landlord's claim for loss of rent is related to the amount of time required to do repairs to the unit that delayed re-rental.

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 vacate the unit until July 5, 2012, the landlord did not prove that the landlord's loss of rent for July was caused by repairs for which the tenant was proven to be responsible. Moreover, I accept the tenant's evidence that the unit was apparently occupied.

With respect to the repairs, I find that 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 portions of the rental unit reasonably clean as required by the Act. In particular, despite the absence of a move-out condition inspection report, I find that the tenant did not adequately clean the oven and possibly other areas. I find that the landlord is entitled to be compensated for cleaning costs of \$50.00, representing 2 hours of labour at \$25.00 per hour.

With respect to the extensive repairs for damage to the unit, 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.

If the landlord was able to prove that the tenant intentionally vandalized or abused the equipment, facilities or premises, then compensation to the landlord could potentially 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 find the landlord's claim for damages to the suite must be dismissed.

Accordingly I find that the landlord is entitled to be compensated in the amount of \$2,444.03 comprised of \$2,344.03 for rental arrears, \$50.00 for cleaning costs and half of the cost of the application in the amount of \$50.00.

Conclusion

I hereby grant a monetary order in favour of the landlord for \$2,444.03. 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 17, 2012.

Residential Tenancy Branch