



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

Decision

Dispute Codes:

MNSD, MNDC, FF

Introduction

This Dispute Resolution hearing was convened to deal with an Application by the landlord for a monetary order for damage or loss under the Act and to keep the security deposit in partial satisfaction of the claim.

Only the landlord appeared.

Preliminary Matter

The landlord testified that they had served each of the two co-tenants separately by registered mail, sent to an address verbally given to the landlord by one of the co-tenants.

I find that the landlord did receive a forwarding address verbally, but that the address that the landlord received would only be applicable to the tenant who spoke directly to the landlord. I find that the two former co-tenants may or may not have relocated to the same address. However, the landlord had only contacted one of the two to confirm their address for mailing.

Sections 88 and 89 of the Act determine the method of service for documents. The Landlord has applied for a Monetary Order which requires that the landlord serve each one of the tenants as set out under Section 89(1). Tenants are jointly and severally responsible for the payment of rent under a tenancy agreement, but in this case, only one tenant had been successfully served with the hearing documents.

As the landlord has not sufficiently proven service of the Notice of Hearing upon the other co-tenant, I find that the landlord's application and monetary claim can only proceed against the tenant who was verified as having been properly served with the Notice of Hearing and the evidence.

Issues to be Decided

The issue to be determined is whether the landlord is entitled to monetary compensation under section 67 of the *Act*.

Burden of Proof: The landlord has the burden of proof to prove that the claims for compensation are justified under the Act.

Background and Evidence

The tenancy began as a one-year fixed term on September 1, 2011 and rent was \$1,175.00 per month. A security deposit of \$587.50 was collected by the landlord.

The landlord testified that the parties gave notice on May 16, 2012 ending the tenancy effective June 30, 2012. The landlord testified that, despite marketing the unit, they did not find a new tenant until September 1, 2012 and incurred a loss of rent in the amount of \$2,350.00 for July and August, 2012, which is being claimed.

The landlord testified that a move-in condition inspection report was completed and signed when the tenancy began. The landlord testified that at the end of the tenancy, a move-out condition inspection report was completed by the landlord in the tenant's absence. A copy of both the move-in and move-out condition inspection reports were in evidence.

According to the landlord, the inspection that proceeded without the tenant occurred because the tenant had been notified in writing to let the landlord know when they would be available to do the move out condition inspection and the tenant failed to respond. No copy of this written notification was in evidence.

The landlord testified that a Notice of Final Opportunity to Schedule a Condition Inspection was issued proposing that the inspection would be conducted on June 30, 2012. Evidently the tenant had already vacated by that date and did not participate.

The landlord testified that the tenant failed to completely clean the unit, did not shampoo the carpets and damaged a bi-fold door

The landlord submitted a list of monetary claims including the following:

- \$180.00 for 4 hours of cleaning
- \$130.00 for carpet cleaning
- \$75.00 for a damaged bifold door

Analysis –Monetary Claim

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 fails to comply with the Act, the regulations or 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 authority to determine the amount and order payment under the 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

The burden of proof is 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.

With respect to the landlord's loss of rent for July and August 2012, I find that the tenant did violate the agreement by ending the fixed term early and that the landlord is entitled to \$2,350.00 for the loss of rent.

With respect to the claim for cleaning, 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.

I accept that the kitchen was not left in a reasonably clean condition as documented in the move-out condition inspection report and that the carpets were not shampooed. I find that the landlord is entitled to a portion of the claimed cleaning costs in the amount of \$90.00 and the \$130.00 for the carpet cleaning.

In regard to the claim for the damaged bi-fold door, I find that the landlord did not submit sufficient proof to meet the test for damages, including the age of the door and the receipt for the purchase. I find that this portion of the landlord's application must be dismissed.

Based on the evidence, I find that the landlord is entitled to \$2,620.00, comprised of \$2,350.00 for loss of rent, \$90.00 for general cleaning, \$130.00 for the carpet cleaning and the \$50.00 cost of the application.

I order that the landlord retain the tenant's \$587.50 security deposit in partial satisfaction of the claim leaving \$2,032.50 still outstanding in favour of the landlord.

Conclusion

I hereby issue a monetary order in favour of the landlord in the amount of \$2,032.50. The order must be served on the landlord and may be enforced through Small Claims Court if left unpaid.

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 18, 2012.

Residential Tenancy Branch