



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNDC, FF

Introduction

This Dispute Resolution hearing was set to deal with an Application by the landlord for a monetary order for the cost of repairs.

Despite being served in person on September 24, 2012, the tenant did not appear.

Issue(s) to be Decided

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

Background

The landlord testified that the tenancy began on January 2012. The rent was \$950.00 and a security deposit of \$425.00 was paid. No copy of the tenancy agreement was in evidence. The landlord testified that the tenant vacated on August 30, 2012. The landlord testified that the tenant did not provide a written forwarding address but she was able to serve him in person where he was living on September 24, 2012.

Submitted into evidence, by the landlord, were 10 pages containing copies of receipts and invoices. The landlord stated that a move-in condition inspection was done at the start of the tenancy, but no move-out condition inspection report was done at the end of the tenancy. No copy of the move-in condition inspection report was in evidence.

The landlord gave verbal testimony that, when the tenant vacated, the unit was left in a damaged condition and required expenditures to bring it up to rentable condition.

The landlord was seeking to keep the tenant's security deposit of \$425.00 to help pay for the costs of fixing the damage left in the suite.

Analysis:

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 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 of the expenditures incurred to rectify the damage or loss.
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 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.

Once that has been established, the claimant must then provide evidence to verify the actual monetary amount of the loss or damage and finally must show that a reasonable attempt was made to mitigate the damage or losses incurred.

In regard 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 rental unit reasonably clean, and undamaged except for reasonable wear and tear. Based on the evidence, I find insufficient proof that the tenant did not comply with section 37 of the Act.

Because of the fact that there was no move-in or move-out condition inspection reports submitted into evidence by the landlord, I find that the landlord was not able to clearly establish the before-and-after state of the rental unit.

While I accept that the landlord did genuinely incur the expenses that were verified by copies of receipts and invoices submitted, I find that this fact would only suffice to satisfy element 3 of the test for damages.

Based on the evidence, I find that the landlord's claim has not successfully met all of the elements of the test for damages. Accordingly, I find that the landlord's application must be dismissed. In light of the above, I hereby dismiss the landlord's application in its entirety without leave to reapply.

I therefore find that the landlord is not entitled to retain the tenant's \$425.00 security deposit currently being held in trust for the tenant and the deposit must be refunded to the tenant forthwith.

I hereby issue a monetary order for \$425.00 in favour of the tenant representing the security deposit paid at the start of the tenancy. This Order must be served on the landlord and, if not paid, may be enforced through Small Claims Court.

Conclusion

The landlord's application and monetary claim is dismissed in its entirety without leave to reapply and a monetary order issued to the tenant for the return of the security deposit.

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: November 20, 2012.

Residential Tenancy Branch