



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

Decision

Dispute Codes: MNDC, MNSD, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord for \$239.07 monetary compensation for damage to the rental unit and a request to retain this amount from the security deposit in satisfaction of the claim. Both parties appeared and gave testimony during the conference call.

Issue(s) to be Decided

Is the landlord entitled to monetary compensation for loss of rent?

Background and Evidence

The tenancy began in July 2009 and the rent was \$1,200.00. A security deposit of \$600.00 and pet damage deposit of \$100.00 is being held. The tenancy ended on October 1, 2012. The landlord testified that the tenant left the unit in need of repair and is claiming damages of \$239.07.

The landlord testified that a move-in and move-out condition inspection report was completed and copies were given to the tenants. According to the landlord the tenant refused to sign the move-out condition inspection report. No copies of the reports had been placed in evidence.

The tenant testified that they were never given an opportunity to sign the move-out condition inspection report and were never given a copy of this report. The tenant testified that the landlord ordered him to leave the premises when disagreements arose in regard to the allegations of damage to the suite.

The landlord testified that the bathroom window was left with cracked glass on the exterior pane and submitted a written estimate for \$125.40. The landlord's evidence included the following statement from a glass replacement contractor: "*The cause of the window breakage could be from anything, including misuse or abuse of the window*". The landlord testified that, because often heard the tenant slam the window shut from their suite, they believe that it had not been damaged from normal wear and tear. The landlord pointed out that the tenant had never reported any damage to the window.

The tenant testified that they did nothing out of the ordinary to damage the window glass and pointed out that the crack in the glass was on the exterior glass layer. The tenant testified that they did not ask the landlord to repair it during the tenancy as they did not consider the matter to be urgent. The tenant disagreed with the landlord's claim.

The landlord testified that there was a broken entry door lever that cost \$26.87 to repair. The landlord submitted a copy of the purchase receipt for a new handle. The landlord testified that the age of the door hardware was approximately 4 or 5 years

The tenants disputed this claim on the basis that the handle was not abused and was utilized in the normal fashion. According to the tenant, the handle was loose when they took occupancy, but the latch was still functional.

The landlord is claiming \$16.80 compensation for replacement of a string to operate blinds on one window. However, the tenant testified that the cord had apparently rubbed against a part of the mechanism in a certain spot and this caused the breakage.

The landlord was also claiming the cost of gas used for transportation to and from the rental unit to do the repairs in the amount of \$20.00. The tenant did not agree that this should be considered as a liability for them.

Analysis

In regard to an Applicant's right to claim damages from another party, section 7 of the Act states that, if a party fails to comply with the Act, the regulations or the 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 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 damage.
4. Proof that the claimant followed section 7(2) of the Act by taking reasonable steps to mitigate or minimize the loss or damage

In this instance, the burden of proof is on the claimant, that being the landlord.

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

I accept the landlord's testimony and evidence showing that the items listed above were damaged and that the landlord incurred some costs to repair this damage. These facts do fully satisfy elements 1, 3 and 4 of the test for damages. However, in order to satisfy element 2 of the test, the landlord must sufficiently prove that the tenant was responsible for the damage not through normal wear and tear, but through a violation of the Act that was perpetrated by the tenant during this tenancy.

I find that normal use of any item, or of the premises in general, cannot be considered to be a violation of the Act. I find that the landlord did not provide sufficient evidentiary proof that the tenant acted intentionally or negligently to damage the exterior glass in the window, the door handle, nor the cord for the blinds.

Given that all four elements of the test for damages have not been met, I find that the landlord's claim for damages must be dismissed and the security deposit and pet damage deposit must be refunded to the tenant forthwith.

I hereby grant a monetary order to the tenant pursuant to section 38 in the amount of \$700.00. This order must be served on the Respondent and may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

Conclusion

The landlord's application is dismissed without leave and the tenant's security deposit and pet damage deposit are ordered to be refunded to the tenant.

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 21, 2012.

Residential Tenancy Branch