



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNDC, MND, 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 and cleaning.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained. The participants had an opportunity to submit documentary evidence prior to this hearing, and the evidence has been reviewed. The parties were also permitted to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the evidence and testimony provided.

Preliminary Issue

A previous hearing was held on the tenant's application seeking the return of the security deposit, which was found to be premature and was dismissed with leave to reapply. The following finding was made at this previous hearing:

"I accept the landlord's testimony that he received the tenant's forwarding address on June 20, 2012."

As I am bound by the previous findings from the hearing held on August 27, 2012, I therefore find as a fact that the landlord received this tenant's written forwarding address on June 20, 2012.

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 a one-year fixed-term tenancy began on May 1, 2011. The rent was \$1,800.00 and a security deposit of \$900.00 was paid. The parties testified

that the tenant vacated the rental unit on April 28, 2012 and that the new tenants took occupancy on the same date.

The landlord gave verbal testimony that after the tenant vacated the unit was left in an unclean and damaged condition. The landlord supplied photos of the rental unit that he received from the new renters on May 28, 2012 by email.

The landlord stated that no move-in nor move-out condition inspection reports were done, but relatives of the landlord were apparently present to oversee the move-out on the last day of this tenancy. In his application, the landlord stated:,

“Issues began at move out and became clearer when I visited the house on May long weekend 2012.”

The landlord is seeking compensation for cleaning, painting and repairs to the unit including the following:

\$313.00 for carpet cleaning

\$1,001.00 to remove tree stump and replace decorative tree in front yard

\$156.80 to clear plumbing pipes blocked by “baby wipes”

\$44.80 to repair a broken lock on the patio door

\$45.00 for a door handle

\$350.00 for professional move-out cleaning

\$249.00 for a new pantry door

\$300.00 to repaint two upper bedrooms

The total amount of the landlord’s claim, based on the above, was \$2,459.50.

Carpet

The landlord testified that, although the condition of the carpet at the start of the tenancy was not documented in a move-in condition inspection report, the carpets were in a clean condition when the tenant moved in. The landlord testified that, despite the fact no move-out condition inspection report was completed at the end of the tenancy, it was confirmed by reports from the new occupants that the carpets were not left in a clean condition when the tenant vacated. The landlord testified that he incurred a cost of \$313.00 to have the carpets cleaned. No receipts were submitted into evidence to confirm this cost. The landlord submitted photos into evidence that were apparently emailed to the landlord by the new renters approximately one month after the tenancy ended.

The tenant disputed the claim for carpet cleaning and pointed out that no move-in condition inspection report nor move-out condition inspection report had been done. The tenant testified that the carpets were less-than pristine when they took occupancy. The tenant testified that she paid to rent a carpet cleaner and submitted a copy of the receipt dated April 27, 2012 to verify this. According to the tenant, the carpets were left reasonably clean as required under the Act.

Tree Replacement

The landlord testified that the tenants had removed an ornamental tree that was growing in the yard and testified that the cost of replacing the tree would be \$1,001.00. The landlord stated that the tree has not been replaced yet. As he is awaiting the outcome of the dispute resolution hearing. The landlord submitted a copy of an estimate dated August 13, 2012.

The tenant disputed the claim for the replacement tree and testified that they did not tamper with this foliage in any respect.

Blocked Plumbing

The landlord testified that, after the tenant vacated, they discovered that a pipe was blocked and had to hire a plumbing firm to remove the blockage at a cost of \$156.80. The landlord testified that "baby wipes" were found in the pipe and he attributes the problem to this tenant's misuse of the fixture. The landlord submitted a receipt for the service call.

The tenant stated that there were previous unresolved issues with the drainage during the tenancy and stated that these were reported to the landlord, who took no action to resolve them. The tenant denied misusing the toilet to dispose of non-flushable items.

Broken Door Lock on Patio Door

The landlord testified that the tenant had broken the lock on the patio door sometime during the tenancy and the landlord was forced to repair it at a cost of \$44.80. The landlord submitted a receipt dated May 30, 2012 verifying the purchase.

The tenant denied abusing the door lock and stated that this was not an issue during their tenancy. The tenant questioned the fact that the repair was not made until May 30, 2012, a month after the tenant had vacated the unit.

Broken Door Handle

The landlord stated that there was a broken door handle on one of the doors in the suite and is claiming \$45.00 for a new door handle. No evidence was submitted with respect to the damage or the cost.

The tenant acknowledged that the door handle was broken during the tenancy when her son was accidentally locked into the bathroom. The tenant testified that they replaced the door handle and completely fixed all of the damage.

Cleaning Costs

The landlord testified that, although there was no move-out condition inspection report, it was reported to him by others that the tenant left the house in an unclean condition. The landlord submitted photos that were sent to the landlord from the new renters showing the inside of a drawer, the toilet, sink, bathtub, light switch, items stacked up in the garage, walls, baseboard and carpeting on the stairway. The landlord is claiming \$350.00 for the professional move-out cleaning. No receipt for this expenditure was submitted into evidence.

The tenant disputed that the house was not left reasonably clean. The tenant pointed out that the photos were sent long after the tenancy had ended and could have been taken at any time. The tenant also pointed out that some of the photos were apparently taken before the tenants had finished moving out of the unit, as evidenced by the fact that their personal possessions were shown still gathered up in the garage waiting to be transported.

According to the tenant, the new occupants arrived to move in early on April 28, 2012. The tenant testified that, they were willing to turn the unit over to the new renters as early as possible, once they finally finished with the final cleaning. The tenant testified that, however, the new residents pressured them to vacate and became impatient about the tenant's attempts to finish the final cleaning.

The landlord stated that he was not in any way involved in the transferring of the unit from the existing tenant to the new residents and merely left the timing to be arranged between the former tenant and the new residents. The landlord acknowledged that the tenant had paid her rent for the full month of April 2012, and was entitled to exclusive possession until April 30, 2012. However, the landlord's position is that it was the short timing for cleaning was solely the tenant's problem because she had freely agreed that the new residents could take occupancy early. The landlord feels that the tenant is liable for deficient cleaning and should pay the resulting costs incurred by the landlord.

Pantry Door Replacement

The landlord testified that there was a hand-mark left on the frosted glass of the pantry door which cannot be removed. The landlord is claiming \$249.00 for a new pantry door. No evidence of the damage was submitted and no receipt was in evidence. However, the landlord provided an illustration of a similar door with the above price quoted.

The tenant disputed the claim for the replacement door and stated that she has no knowledge of the alleged damage to the glass.

Painting

The landlord testified that during her tenancy the tenant was given permission to repaint two bedrooms, provided the rooms be restored to a neutral shade upon vacating. However, the 2 rooms in question were left without being repainted. The landlord acknowledged that he has not yet repainted the rooms, but has promised the new residents that it will be done in future. The landlord supplied an estimate from a painter and is claiming \$300.00 in compensation.

The tenant argued that no agreement was ever made to restore the rooms to their original colour or a neutral shade. The tenant stated that the rooms were professionally painted and repairs to the walls were made at the same time, leaving the rooms in a reasonable condition and there is no reason that they need to be repainted again .

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 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. 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 cleaning and repairs, I find that section 32 of the Act requires that a tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access. While a tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant, a tenant is not required to make repairs for reasonable wear and tear.

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.

In establishing whether or not the tenant had complied with this requirement, I find that this can best be established with a comparison of the unit's condition when the tenancy began with the final condition of the unit after the tenancy ended. In other words, through the submission of move-in and move-out condition inspection reports containing both party's signatures. Section 23(3) of the Act, discussing move-in inspections and section 35 of the Act dealing with move-out inspections, place the obligation on the landlord to complete the condition inspection report in accordance with the regulations and both the landlord and tenant must sign the condition inspection report, after which the landlord must give the tenant a copy of that report in accordance with the regulations.

In this instance, the landlord admitted that neither a move-in condition inspection report nor move-out condition inspection report was completed. I find the failure to comply with sections 23 and 35 of the Act has hindered the landlord's ability to establish the beginning-of-tenancy versus the end-of-tenancy conditions, in order to determine what damage was caused during the tenancy by the tenant.

I find that the landlord's claims including the \$313.00 for carpet cleaning, \$1,001.00 to replace the tree, \$156.80 for plumbing repairs, \$44.80 for the broken lock on the patio door, \$45.00 for the door handle, \$350.00 for cleaning, \$249.00 for the pantry door and \$300.00 for painting have all failed to meet element 2 of the test for damages. I find that most of the above claims have also failed to meet element 3 of the test for damages as the landlord has not proven that the claimed costs have actually been incurred despite the fact that the unit was re-rented some time ago.

Based on the evidence and testimony, I find that none of the landlord's claims has sufficiently met all of the elements in the test for damages and 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.

Security Deposit

As I have found that the landlord is not entitled to any monetary compensation for damages, I find that the tenant's security deposit must be refunded forthwith. I find that section 38 of the Act states that, within 15 days after the later of the day the tenancy ends, and the date the landlord receives the tenant's forwarding address in writing, the landlord must either repay the security deposit or pet damage deposit to the tenant with interest or make an application for dispute resolution claiming against the security deposit or pet damage deposit.

The Act states that the landlord can only retain a deposit if the tenant agrees in writing the landlord can keep the deposit to satisfy a liability or obligation of the tenant, or if, after the end of the tenancy, the landlord obtains an order permitting the landlord to retain the amount.

A finding was already made at an earlier hearing that the landlord received the tenant's written forwarding address on June 20, 2012. I find that the tenant did not give the landlord written permission to keep the deposit, nor did the landlord make an application for an order to keep the deposit within the required 15 days after June 20, 2012.

Section 38(6) provides that If a landlord does not comply with the Act by refunding the deposit owed, or making application to retain it within 15 days, the landlord may not make a claim against the security deposit or any pet damage deposit, and must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

I find that the tenant's security deposit was \$900.00 and that the landlord failed to follow the Act in retaining the funds being held in trust for the tenant. I find that the tenant is therefore entitled to compensation of double the deposit, amounting to \$1,800.00.

Accordingly, I hereby issue a monetary order in favour of the tenant in the amount of \$1,800.00. This order must be served on the landlord and may be filed in Small Claims Court for an order to enforce if necessary.

Conclusion

The landlord's claim for monetary compensation is dismissed without leave and the tenant is granted a Monetary Order for a refund of double 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 27, 2012.

Residential Tenancy Branch