



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNDC, MND, MNSD

Introduction

This Dispute Resolution hearing was set to deal with an Application by the landlord for a monetary order for repairs and cleaning in compensation for damages under the Act.

The landlord appeared and despite being served by registered mail sent on September 21, 2012, the tenant did not appear.

Issue(s) to be Decided

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

Background

The landlord testified that a tenancy began on October 1, 2011. The rent was \$1,500.00 per month and a \$750.00 security deposit had been paid.

No copies of the move-in or move-out condition inspection reports were submitted into evidence and the landlord did not submit a copy of the tenancy agreement. However, the landlord submitted photos to verify that cleaning and garbage removal was required. The landlord also submitted evidence of expenditures for cleaning and repairs exceeding the tenant's \$750.00 security deposit.

However, the landlord stated that she was claiming compensation equal to the amount of the tenant's \$750.00 security deposit in full satisfaction of the claim.

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 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 37(2) of the Act provides 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 that the tenant did not comply with section 37 of the Act. I find that the landlord's evidence satisfies all elements of the test for damages and accept that the tenant's violation of the Act resulted in a monetary loss to the landlord exceeding the \$750.00 security deposit.

Accordingly I grant the landlord's request to retain the tenant's \$750.00 security deposit in full satisfaction of all claims for cleaning and repairs.

Conclusion

The landlord is granted the right to keep the tenant's remaining security deposit of \$750.00 in full satisfaction of the claim.

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: December 10, 2012.

Residential Tenancy Branch