



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding NACEL PROPERTIES LTD
and [tenant name suppressed to protect privacy]

Decision

Dispute Codes:

MNSD, FF

Introduction

This Dispute Resolution hearing was set to deal with an Application by the landlord for a monetary order for cleaning, garbage removal, painting and carpet cleaning, plus cleaning supplies and painting supplies.

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 affirmed testimony and relevant evidence that was properly served.

Issue(s) to be Decided

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

Preliminary Issue

The respondent tenant testified that they served evidence on the landlord consisting of photos of portions of the rental unit under dispute. The landlord acknowledged receiving this evidence. The tenant testified that they also submitted this evidence to the file and received confirmation from Residential Tenancy Branch on or around April 17, 2013, approximately 2 weeks prior to the hearing.

However, this evidence was not found in the file. Rule 11.6 of the Residential Tenancy Rules of Procedure permits the Dispute Resolution Officer to adjourn a dispute resolution proceeding to receive evidence that a party states was submitted to the

Residential Tenancy Branch but was not received by the Dispute Resolution Officer before the dispute resolution proceeding.

In this instance, I find that the tenant had already submitted their evidence within the statutory deadline specified under the Act. Therefore, in order not to delay this matter through an adjournment, a decision was made to permit the tenant to resubmit the missing evidence after the hearing, to be considered before the decision is rendered,

The landlord also made a request to submit late evidence, consisting of copies of receipts that they had failed to submit to the file or serve on the other party. However, Residential Tenancy Rules of Procedure, Rule 3.4 requires that, to the extent possible, the applicant must serve their evidence on the respondent and file copies of all available documents, or other evidence at the same time as the application is filed or if that is not possible, at least (5) days before the dispute resolution proceeding.

Given the above, the landlord's request to submit late evidence was denied.

Background and Evidence

The landlord testified that the tenancy began on February 1, 2012 and ended on January 31, 2013. The rent was \$1,700.00 per month and a security deposit of \$850.00 was paid.

The landlord testified that when the tenant vacated, the rental unit was not left in a reasonably clean state. Supported by the data on the move-out condition inspection report and other documents submitted into evidence, The landlord pointed out that the tenant should be ordered to reimburse the landlord for the following:

- \$140.00 for carpet-cleaning
- \$180.00 for 6 hours of cleaning by two workers at \$30.00 per hour,
- \$36.00 for cleaning supplies,
- \$150.00 for painting, and
- \$52.50 for painting materials.

The total claim is for \$558.50 plus the \$50.00 cost of filing the application. The landlord submitted into evidence a copy of the move-in and move-out condition inspection reports. The 3 pages of these reports included

- A “*Security Deposit Refund*” sheet, listing the costs for each service for which compensation is being claimed,
- a “*Condition Inspection Report*”, that included spaces where the tenant could either choose to agree or disagree with the report. The tenant’s signature was written only in the space for the “*Start of Tenancy*”. In addition, the section where the tenant could choose to agree or disagree with the End of Tenancy inspection, was left blank, and,
- a page titled, “*Apartment Inspection Report*”, that contained a list of features, room by room with ratings for the conditions of each feature at the time of moving in and moving out. The “*Condition In*” section was signed by both parties but the “*Condition Out*” section was only signed by the landlord.

The landlord testified that the tenant was present for the final move-out inspection, but refused to sign the form.

The tenant acknowledged that they did not sign the “*Apartment Inspection*” report page and stated that the basis for their refusal was because they disagreed with some of the landlord’s notations and there was no place to indicate this. The tenant testified that they were never given the opportunity to sign the page titled, “*Condition Inspection Report*”, where they could indicate their disagreement with the landlord’s notations. According to the tenant, this was due to the fact that the landlord neglected to present this particular document to them. The tenant testified that they were never given a copy of the reports.

The tenant disputed all of the landlord’s charges and submitted photographs of the specific areas in question, which, according to the tenant, show these disputed areas as being “reasonably clean”. The tenant’s position is that the landlord did not conduct the move-out condition inspection properly and did not fill out the report accurately.

With respect to the costs claimed for general cleaning, the landlord stated that the work entailed 6 hours labour for 2 cleaners at the rate of \$30.00 per hour, plus \$36.00 for the cost of materials totaling \$216.00. According to the landlord, two bathrooms had to be cleaned as well as the windows, blinds, kitchen cabinets, the stove, and other deficiently cleaned areas.

The tenant did not agree with the landlord’s allegation that they did not leave the unit reasonably clean and felt that their photos submitted into evidence supported this position. The tenant stated that some of the carbon on the stove could not be removed and they believe that this was due to normal wear and tear.

The landlord testified that a term in the tenancy agreement makes it clear that the tenant is responsible for having the carpets professionally cleaned at the end of the tenancy and the tenant violated this term by not having this done before leaving. The landlord is claiming \$140.00 for the cost and submitted a purchase order showing this amount.

The tenant stated that the carpet cleaning charges were not justified because the carpets had been compromised by flooding during the tenancy. The tenant pointed out that they were forced to endure 3 weeks of damp carpets, after which the landlord finally replaced carpet in the entry area and the dining room and also refurbished the living room carpet by installing new under pad. This apparently occurred in August 2012. The tenant testified that the upstairs carpets were never cleaned nor restored by the landlord after the water damage, so they should not be charged for these cleaning costs at the end of the tenancy.

The landlord argued that, the tenant was still responsible for cleaning the new and refurbished carpets. In regard to the upstairs area, the landlord acknowledged that they did not refurbish or clean these carpets, but stated that this was caused by the tenant's refusal to cooperate with the landlord's attempts to schedule the work.

The landlord withdrew the monetary claim for the cost of repainting.

Analysis

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 for damage and loss including: proof that the damage or loss exists, proof that this damage or loss happened solely because of the actions or neglect of the tenant of the Act or agreement, verification of the actual amount required to compensate for the claimed loss or to rectify the damage and proof the claimant took steps pursuant to section 7(2) of the Act minimize the loss.

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.

Section 37 (2) of the Act states, 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 find that the tenant's role in causing damage or in failing to leave a unit reasonably clean, can normally be established by comparing the condition before the tenancy began with the condition of the unit after the tenancy ended through the submission of

completed copies of the move-in and move-out condition inspection reports, featuring both party's signatures.

In this instance, I find that the landlord was relying on the written move-in and move out condition inspection reports to verify the condition of the rental unit.

However, the move out condition inspection report was not signed by the tenant, and the notation, "refused to sign" had been written in the space where the tenant's signature would go. The tenant has alleged that this document was never presented to them at all.

The landlord's other document, titled, "*Apartment Inspection Report*" had been completed but the tenant's signature is also missing. The comment, "*refused to sign*" has been written in the space where the tenant's signature should be featured.

I find that there is no place on the Apartment Inspection Report where the tenant can indicate that they disagree with the contents of the Report, only a space where the tenant's signature will indicate that they consent to the deductions of the amounts shown for cleaning and repairs, from the security deposit.

Given the controversy over the move out condition inspection process followed by the landlord and nature of the forms, I find that the evidentiary weight of the Inspection Reports has been compromised. In addition, based on the tenant's photographic evidence, I find that, while the rental unit was not left in a completely pristine state in some areas, it was, on a balance of probabilities left in a reasonably clean condition to meet the standards required under the Act.

In regard to the claimed charges for carpet cleaning, I find that it is a normal expectation, under the Act, that the carpets be left in a clean condition by a tenant at the end of the tenancy. I also find that the terms of the tenancy agreement also require that the carpets be shampooed before the tenant vacates. However, I find that in this situation, the requirement to clean all of the carpeting has been complicated by the fact that some of the carpets are to be restored due to water damage. That being said, I accept the landlord's position that the replaced carpeting should have been cleaned. Accordingly, I find that the landlord is entitled to a portion of the carpet-cleaning costs in the amount of \$100.00.

Based on the testimony and evidence I find that the landlord is entitled to compensation of \$150.00 comprised of \$100.00 for the carpet-cleaning and the \$50.00 cost of this application. I hereby order that the landlord retain this amount from the tenant's \$850.00 security deposit in full satisfaction of the claim, leaving \$700.00 of the tenant's security deposit still held in trust.

I hereby grant the tenant a monetary order for the refund of their remaining security deposit in the amount of \$700.00. This order must be served on the landlord and may be enforced in small claims court if necessary.

The remainder of the landlord's application is dismissed without leave.

Conclusion

The landlord is partially successful in the claim and is granted an order to retain a portion of the tenant's security deposit as full payment of the claim. The tenant is granted a monetary order for the remainder of the 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: May 22, 2013

Residential Tenancy Branch

