



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: MNR, MNDC, MNSD, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord for a monetary order for loss of rent of \$1,100.00, general cleaning and the cost of carpet 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 affirmed testimony and relevant evidence that was properly served.

Issue(s) to be Decided

Is the landlord is entitled to monetary compensation for loss of revenue and damages?

Background and Evidence

The tenancy began on April 17, 2012. Rent was \$1,100.00 per month and a security deposit of \$550.00 was paid.

The landlord testified that on March 13, 2013, the tenant gave written Notice to vacate effective the end of March 2013. The landlord testified that the tenant had not given adequate notice of one month in accordance with the Act.

The landlord testified that they immediately posted ads to find new tenants for April 1, 2013. No evidence was submitted to confirm that the unit was advertised.

However, the landlord testified that they did show the rental unit during the month of March 2013. The tenant disputed this claim.

The landlord testified that, despite their efforts, they were not successful in finding a suitable candidate to take the unit as of April 1, 2013. The landlord testified that the unit

was not re-rented until May 1, 2013. The landlord submitted documentary provided evidence to support the date that the new tenancy started. According to the landlord, the tenant's failure to give proper notice in compliance with the Act, caused the landlord a loss of \$1,100.00 rent for the month of April 2013, which is being claimed.

The tenant acknowledged that they did not provide one month notice before ending the tenancy.

The landlord testified that when they tried to discuss the insufficient notice given for terminating the tenancy, the tenant disclosed that the rental unit had a vermin infestation and this was why she had to move out on short notice.

The tenant testified that the reason they had to vacate with some urgency, was due to unsatisfactory living conditions in the unit stemming from a vermin infestation. The tenant testified that she had health issues and was on medication. The tenant submitted photos showing what are purported to be mice droppings on the carpets in several areas of the suite. The tenant also submitted a copy of a doctor's note dated April 2, 2013, stating that the tenant was treated for ailments related to living in a "*mice infested home*" for several months during the past year.

The landlord argued that they have a pest control contractor that regularly inspects the building and carries out extermination measures. The landlord testified that there was not a serious infestation of mice, as evidenced in the inspection report from the pest control company dated April 15, 2013, that was submitted into evidence.

The landlord testified that, when the tenant vacated, the carpet was not properly cleaned, in violation of a specific term in the tenancy agreement, requiring that the tenant have the carpets professionally cleaned. The landlord submitted a copy of an invoice dated, April 18, 2013, for \$106.40, for carpet cleaning.

The landlord testified that the tenant also did not adequately clean the rental unit upon vacating. The landlord testified that there was 2.5 hours cleaning that had to be done and provided an invoice for the \$60.00 cost. The cleaner's invoice is dated March 23, 2013.

In support of the above claims, the landlord made reference to the move-in and move out condition inspection reports that indicated the carpets required cleaning at the end of the tenancy and that every room in the rental unit required some cleaning.

On the first page of the inspection report, the tenant and landlord both completed the data and signed the "**(on Move In)**" section at the left side of the bottom of the page.

In the section for signatures of the parties at the right side of the bottom of the page, under the notation, “**(on Move Out)**” the landlord signed in the space reserved for the landlord’s signature. However, in the space reserved for the tenant’s signature, there is a signature shown with the word, “*Witness*” written beside it. The landlord testified that the tenant did not agree with the move-out inspection report and refused to sign it, so the landlord’s witness signed it instead.

The landlord also pointed out that the tenant also refused to sign the bottom of the landlord’s “*Apartment Inspection Report*” where it states:

“DECLARATION: We, being the tenant(s) acknowledge liability and subsequent charges for the above-noted cleaning and damages or the condition of this suite is as noted, as my signature attests to this fact.”

On the lines below this statement, the form is dated and signed. However, the landlord testified that the signature in the space marked, “*Tenant/Witness Signature*”, is not that of the tenant. According to the landlord, it is their normal practice to have a witness for the landlord sign the form in cases where the tenant is not present or refuses to sign it.

The tenant disputed the landlord’s testimony and the contents of the move out condition inspection report with respect to the carpets. The tenant testified that that they used professional equipment to clean and sanitize the carpeting and they do not agree that the rental unit was not left reasonably clean.

Analysis

The damages claimed by the landlord includes the loss of one month rent and carpet cleaning costs.

With respect to an applicant’s right to claim damages from another party, section 7 of the Act provides that if a party fails to comply with the Act or agreement, the non-complying party must compensate the other for any damage or loss that results. 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 reasonable steps to mitigate or minimize the loss or damage

Loss of Rent

In regard to the landlord's claim for loss of rent, I find that the tenant did violate section 45 of the Act by failing to give one full month written Notice effective the day before the day rent is due. I find it was established that a loss of \$1,100.00 rent for the month of April 2013.

With respect to the tenant's argument that she had to vacate suddenly due to the mice infestation, I find that the tenant should have been prepared to submit proof to confirm that she had first notified the landlord in writing and had given the landlord an opportunity to address the tenant's vermin complaint *before* the tenant took the drastic action of permanently vacating without proper notice.

I find that the landlord did suffer a loss of revenue. However in order to establish that the loss of rent claim meets element four of the test for damages, the landlord must show that reasonable steps were taken to mitigate the loss.

I find that there is an expectation that the landlord must try to find another tenant as quickly as possible by advertising the rental unit without delay.

In the case before me, although the landlord did not provide clear evidence that the unit was advertised, the landlord did submit evidence that a notification was given to the tenant to allow the landlord access on March 21, 2013, "*to accommodate a prospective tenant viewing the premises*" and, "*to complete a preventative maintenance report*". The landlord also established that they eventually were successful in finding a new tenant to occupy the unit.

I find that, on a balance of probabilities, the landlord has met the obligation to prove that they made a reasonable effort to mitigate the loss by re-renting the unit at the earliest opportunity. Therefore, I find that the landlord is entitled to the claim for \$1,100.00 for loss of revenue for the month of April, 2013.

Cleaning

In regard to the claimed costs for cleaning, 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.

I find that the tenant's role in causing damage can normally be established by comparing the condition before the tenancy began with the condition of the unit after the tenancy ended. In other words, through the submission of completed copies of the move-in and move-out condition inspection reports featuring both party's signatures.

In this instance, the landlord submitted copies of the *Move-In And Move Out Condition Inspection Reports*, a "Security Deposit Refund Sheet" and an "Apartment Inspection Report" with a "Declaration" section at the bottom only containing a place where the tenant can sign to accept the content of the report, but no section that allows the tenant to dispute or object to the content.

In any case, I find that the content of the reports were rejected by the tenant, who refused to sign at all. I also find that there were some areas of the forms that were not completed appropriately due to the fact that the sections of the form which should have been reserved strictly for the tenant's signature had actually been signed by a third party as a "witness".

Section 20(1) of the Residential Tenancy Regulations contains detailed information about the format and content that must be featured in condition inspection reports, completed under section 23 or 35 of the Act. I encourage the landlord to strictly comply with the Act and Regulation in this regard. .

Section 21 of the Residential Tenancy Regulations states that, in dispute resolution proceedings, a condition inspection report completed in accordance with this Part is evidence of the state of repair and condition of the rental unit or residential property on the date of the inspection, unless either the landlord or the tenant has a preponderance of evidence to the contrary.

I find that the report submitted into evidence had not been completed strictly in accordance with the Act and Regulations and the evidentiary weight of this evidence was affected by this fact.

I accept that the landlord has verified that they did incur expenditures for cleaning and carpet cleaning. However I find that the landlord has not sufficiently proven that the tenant failed to comply with the Act or agreement by leaving the unit reasonably clean. Accordingly I find that the claims for the cleaning and carpet cleaning costs did not satisfy the test for damages and must be dismissed.

Based on the evidence, I find that the landlord has established a total monetary claim of \$1,150.00 comprised of \$1,100.00 for loss of rent for April 2013 and the \$50.00 cost of the application.

I order that the landlord retain the tenant's \$550.00 security deposit in partial satisfaction of the claim leaving a balance still owed of \$600.00.

Conclusion

I hereby grant the landlord a monetary order for \$600.00. This order must be served on the landlord and may be filed in Provincial Court (Small Claims) and enforced as an order of that Court.

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

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: June 4, 2013

Residential Tenancy Branch