



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

Decision

Dispute Codes:

MND, MNR, MNSD, MNDC , FF

Introduction

This Dispute Resolution hearing was convened to deal with an application by the landlord for a monetary claim for utilities and damages and reimbursement of the \$50.00 filing fee. The hearing was also convened to deal with an application by the tenant for the return of the security deposit under the Act in addition to the \$50.00 fee paid by the tenant for this application.

The landlord appeared. However, despite being served with the application both in person and by registered mail, neither of the co-tenants appeared to present their cross-application or to defend against the landlord's claim.

As the tenants failed to appear, the tenant's application must be dismissed.

Issues to be Decided

Is the landlord entitled to be compensated for damages and to retain the security deposit in partial satisfaction of the claim?

Background and Evidence

The landlord testified that the tenancy began on September 1, 2011 and the most current rental rate was \$2,400.00. A security deposit of \$900.00 was paid at the start of the tenancy. The landlord testified that the tenant was given a reduced rent for the first two months of the tenancy.

The landlord testified that the tenant fell into arrears for rent and accrued a debt of \$1,000.00 as of August 2012, which is being claimed. In addition, according to the landlord, the tenant did not pay rent for the month of September 2012 in the amount of \$2,400.00, which is also being claimed.

The landlord testified that, under the tenancy agreement, the tenants were responsible to pay their own utilities. The landlord testified that they received a utility bill from the municipality for the cost of water consumption and sewer costs. The landlord submitted a copy of the invoice addressed to the landlord indicating that there was an outstanding balance of \$956.00. The landlord testified that the tenants left without paying the final bill and this was transferred to the landlord as a debt on the property. The landlord is claiming \$548.68 in damages.

The landlord testified that, although no move-in or move-out condition inspection reports were completed, the rental unit and the grounds were presented to the tenant in pristine condition at the time the tenant moved in and the tenant returned the rental unit in a significantly damaged state. The landlord testified that the tenant did not cooperate in attempts to arrange the inspection and therefore forfeited their right to the return of the \$900.00 security deposit.

The landlord testified that, after the tenant vacated, the unit had to be cleared of garbage at a cost of \$196.00. The landlord submitted photos of the refuse left on the premises and an invoice for the removal.

The landlord testified that the wall-to-wall carpets had been ruined by the tenant's misuse of the washing machine during the tenancy, which flooded the unit and the hallway. The landlord submitted estimates of the cost to replace the carpet. According to the landlord, the carpeting was only 3 years old. The landlord is claiming \$842.89

The landlord testified that the yard was left by the tenant in an unkempt, overgrown and damaged state with neglected plants and grounds. The landlord testified that the tenant had dug holes for planting in areas that were not previously cultivated and, in doing so, had damaged the underground irrigation system. The landlord submitted photos and invoices documenting the costs and damage.

The landlord acknowledged that the tenancy agreement, a copy of which is in evidence, does not specifically address details about the tenant's obligations or restrictions relating to the care and maintenance of the exterior premises. However, the landlord's position is that the tenant willfully tampered with the landlord's professional landscaping without permission and physically damaged the system by their negligent actions. The landlord is claiming \$962.16 for the remediation costs and submitted supporting invoices documenting the cost.

The landlord is claiming repair costs for damaged walls that the landlord alleged needed to be patched and repainted at a cost of \$842.82. Photos of drilled and damaged portions of the walls were submitted into evidence.

The landlord is also claiming cleaning costs in the amount of \$610.40 and submitted an invoice verifying these costs.

Analysis:

With respect to the rental arrears in the amount of \$3,400.00, I find that section 26 of the Act states that rent must be paid when it is due, under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement. I find that the tenant did not pay the rent when it was due and the landlord is therefore entitled to compensation of \$3,400.00 for rental arrears.

In regard to the claims for utilities, cleaning and repairs, I find it 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, and
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.

I find that section 37(2) of the Act provides that, when vacating a rental unit, the tenant must leave it 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 a comparison of the unit's condition when the tenancy began with the final condition of the unit when the tenancy ends is necessary. In other words, through the submission of move-in and move-out condition inspection reports containing both the landlord's and the tenant's signatures.

Section 23(3) of the Act covering move-in inspections and section 35 of the Act for the move-out inspections places 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, I find that the landlord admitted that neither a move-in condition inspection report nor a no move-out condition inspection report had ever been done in the presence of the tenant.

The landlord testified that the unit had to be cleared of garbage at a cost of \$196.00 and verified this through photos of the refuse left on the premises and an invoice for the removal. I accept that the items shown in the photographs were left by the tenants and find that the landlord is entitled to the garbage removal's claim in the amount of \$196.00

With respect to the alleged damage to the carpets, I find that, although the landlord has proven that costs were incurred, which satisfies element 3 of the test for damages, the landlord failed to submit sufficient proof to establish that the claim meets element 2 of the test for damages by proving that the tenant was solely at fault. In addition, I find that in order to meet element 4 of the test for damages, the landlord must prove that reasonable steps to mitigate the damage had been attempted before replacing the carpets. As the landlord failed to satisfy the test for damages, I find that the landlord's claim for \$842.89 must be dismissed.

In regard to the repair costs for damaged walls I find that the condition of some sections of the walls, as revealed in the photos, was not pristine and required spackling or plastering. However, in the absence of comprehensive move-in and move-out condition inspection reports, I find that it is not possible to determine whether the tenant caused the damage shown, sufficient to meet element 2 of the test for damages. Accordingly, I find that the landlord's claim for \$842.82 for the wall repairs has not been proven to justify the compensation claimed and must be dismissed.

With respect to the \$610.40 claim for cleaning costs, I accept that the landlord did pay the amount claimed. However, I find that the fact a thorough cleaning was done by professional cleaners does not function, in the absence of a condition inspection report, as clear proof that the tenant contravened section 37(2) of the Act. The standard imposed by the Act is only that the unit be left "*reasonably clean*". I find that this standard may fall short of being considered as satisfactory to a landlord seeking to rent or sell the unit. I find that the landlord's claim for cleaning costs does not completely satisfy all elements of the test for damages and must be dismissed.

In regard to the claims relating to the grounds, I find it is clear that the tenants failed to meet the landlord's expectations regarding the level of care and maintenance to the yard. However, I find that the question to be answered is whether or not the tenant's failure to perform the expected duties constituted a breach of the Act or tenancy agreement.

Section 6 of the Act states that a party can make an application seeking enforcement of the rights, obligations and prohibitions established under the Act or the tenancy agreement. Section 58 of the Act also gives a landlord or tenant the right to make an application for dispute resolution in relation to a conflict dealing with: (a) rights, obligations and prohibitions under the Act; OR (b) *rights and obligations under the terms of a tenancy agreement*. (My emphasis)

As an arbitrator, I have the authority to determine disputes about noncompliance with both the terms of the tenancy agreement and the statutory requirements imposed by the Residential Tenancy Act.

In this instance, I find that section 32 of the Act imposes responsibilities on both the landlord and the tenant for the care and cleanliness of a rental unit and common areas.

The Act requires that a landlord must provide and maintain residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law, to make it suitable for occupation by a tenant. 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".

I find that the evidence presented does not prove that either the tenant or the landlord violated section 32 of the Act in relation to the grounds keeping.

I find that the terms of the tenancy agreement are basic and that there are no specific instructions about gardening, nor does the agreement list detailed duties to be handled by the tenant regarding the maintenance of the yard or grounds-keeping tasks.

I find that section 6(3)(c) of the Act states that a term of a tenancy agreement is not enforceable if the term is not expressed in a manner that clearly communicates the rights and obligations under it.

Given the above, I find that the landlord's claim for reimbursement of \$962.16 for the remediation costs to the landscaping must be dismissed as the landlord has not established that the tenant violated the Act or the agreement. The claim therefore fails to meet element 2 of the test for damages.

In regard to the claim for utilities, I find that the tenancy agreement shows that the costs for heat, electricity, sewer and water were to be borne by the tenant. That being said, I find that there are no specific details are contained within the agreement about whose name the accounts will be in, how these services will be billed or how and when they must be paid. I find that the invoice from the municipality, is addressed to the landlord and was billed on November 21, 2012. I find that the invoice indicated that the billing period covered was from June 16, 2012 to October 15, 2012. I find it is not clear when, or if, the landlord issued a written demand for payment from the tenant, nor what amount the landlord had requested. For this reason, I find that the landlord's claim for reimbursement for the municipal services including sewer, water and penalties must be dismissed.

Based on the testimony and evidence presented during these proceedings, I find that the landlord is entitled to compensation of \$3,596.00 comprised of \$3,400.00 in rental arrears, \$196.00 garbage removal and \$25.00 representing half the cost of the application, due to the fact that the landlord was only partly successful in the monetary claims.

I order that the landlord retain the tenant's \$900.00 security deposit in partial satisfaction of the debt leaving, leaving \$2,746.00 still outstanding in favour of the landlord.

The remainder of the landlord's application is dismissed.

I hereby grant the landlord a monetary order for \$2,746.00. This order must be served on the landlord and is final and binding. If necessary it may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

The remainder of the landlord's application is dismissed.

Conclusion

The landlord is partially successful in their application and is granted monetary compensation, a portion of which will be retained from the tenant's security deposit. The remainder of the landlord's monetary claim is 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: July 02, 2013

Residential Tenancy Branch