



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

Decision

Dispute Codes:

MND, MNSD, MNDC, MNR, FF

Introduction

This Dispute Resolution hearing was set to deal with an Application by the landlord for compensation for damage or loss under the Act. The landlord appeared and gave testimony.

Despite being served by registered mail sent on May 7, 2013, the respondent did not appear.

Issue(s) to be Decided

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

Background and Evidence

The landlord testified that the tenancy began on July 1, 2012. The landlord testified that rent was \$750.00 and apparently included utilities, except when hydro exceeded a base amount, in which case the tenant was expected to pay an additional portion. No copy of the tenancy agreement was in evidence.

The tenant paid a security deposit of \$400.00. The tenancy ended on April 30, 2013 and the tenant had agreed in writing to surrender \$211.00 for the security deposit for hydro costs.

The landlord testified that the tenant was offered two opportunities for the move-out condition inspection and submitted copies of emails communications to the tenant offering flexible dates for conducting the inspection.

One email attempting to schedule the move-out condition inspection was dated April 13, 2013 and the other was dated April 15, 2013. The landlord testified that the tenant did

not respond to either of these communications, despite the fact that the tenant had previously responded to messages from the landlord sent to the same email address.

The landlord pointed out that the tenant had also answered mail sent to this address later in the month, on April 29, 2013 and April 30, 2013. The landlord stated that, on April 30, 2013, the tenant also acknowledged receipt of the landlord's email regarding the \$211.00 hydro bill sent on April 8, 2013 to the email address in question.

A copy of a move-in condition inspection report dated April 29, 2013, was in evidence. The landlord testified that, on April 29, 2013, the landlord conducted the move-out condition inspection without the tenant, after having posted the *Notice of Final Opportunity to Schedule a Condition Inspection* on the tenant's door on April 24, 2013. The landlord testified that the tenant simply did not show up.

The landlord submitted a copy of an email dated April 30, 2013, from the tenant in which the tenant gave the landlord written permission to retain \$211.00 from the tenant's security deposit and requested the immediate return of the remaining \$189.00.

The tenant's April 30, 2013, email also contained a denial by the tenant that she had ever received any previous Notices from the landlord offering opportunities to schedule the move-out condition inspection and the tenant further alleged that the landlord had never given the tenant a copy of the move-in condition inspection report at the start of the tenancy, as required by the Act.

The landlord's position is that the tenant had extinguished her right to the return of the security deposit because the tenant refused to cooperate in the landlord's efforts to schedule the move-out condition inspection.

The landlord submitted a list of claims, including a hydro estimate for April 2013 consumption. The landlord had submitted into evidence a copy of a hydro account printout dated April 5, 2013 for \$750.00. Compensation is also being claimed for repairs, dumping fees and the cost of changing the locks. No invoices were submitted to support the claims for these expenditures.

Analysis

Utilities

Arrangements between parties concerning utilities must be contained in the tenancy agreement.

Section 6 of the Act states that the rights, obligations and prohibitions established under the Act are enforceable between a landlord and tenant under a tenancy

agreement and that a landlord or tenant may make an application for dispute resolution if they cannot resolve a dispute. (my emphasis)

According to the landlord, the tenant owes \$43.00 in utility charges and this claim is apparently based on a term in the tenancy agreement that requires the tenant to pay, in addition to the rent, a portion of the utilities whenever the bill exceeds a certain base amount. However, no copy of the tenancy agreement was in evidence. I was unable to examine and interpret the contract term detailing this particular arrangement.

Because the required payment of utilities was pursuant to a specific term within the tenancy agreement and no copy of the agreement was submitted, I find insufficient evidence was produced by the landlord that would enable me to grant this portion of the landlord's claim. I find that the claim for utility payment for April 2013, must therefore be dismissed.

Damages

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, 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 a tenant vacates a rental unit, the tenant must leave it 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 properly completed copies of the move-in and move-out condition inspection reports featuring both party's signatures.

Move-In/Move-Out Condition Inspection Reports

With respect to a move-in inspection, section 23(1) of the Act requires that the landlord and tenant together must inspect the condition of the rental unit on the day the tenant is entitled to possession of the rental unit, or on another mutually agreed day.

I find that section 23 (4) of the Act states that the landlord must complete a move-in condition inspection report in accordance with the regulations . Section 23(5) requires that landlord must give the tenant a copy of that report in accordance with the regulations. (My emphasis)

I find that Residential Tenancy Regulation 18(1), also confirms that the landlord must give the tenant a copy of the signed condition inspection report of an inspection made under section 23 of the Act, promptly, and in any event within 7 days after the condition inspection is completed

In this instance, I find that the landlord did not give the tenant a copy of the move in condition inspection report as required by the Act.

I also find that Residential Tenancy Regulation 20(1), also sets out requirements for the form and content of condition inspection reports. I find that the document utilized for the move in condition inspection report failed to comply with section 20(1). In particular, the landlord's form did not contain certain mandatory elements as required under the Regulations including the following:

(j) appropriate space for the tenant to indicate agreement or disagreement with the landlord's assessment of any item of the condition of the rental unit and contents, and any additional comments; and

(k) the following statement, to be completed by the tenant:

I,(Tenant's name)

[] agree that this report fairly represents the condition of the rental unit.

[] do not agree that this report fairly represents the condition of the rental unit, for the following reasons:

I find that this missing element on the form utilized by the landlord affects the evidentiary weight of the condition inspection report. Moreover, I find that section 24(2)(c) of the Act states that the right of a landlord to claim against a security deposit for damage to residential property is extinguished if the landlord, does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations. (My emphasis).

In this situation, I find that the landlord failed to comply with the Act in regard to the statutory requirement that a proper a proper move-in condition inspection report be completed and given to the tenant. I find that this lapse therefore extinguished the landlord's right to claim against the tenant for damage to the unit.

In regard to the landlord's allegation that the tenant did not cooperate with the landlord's attempt to schedule a move-out condition inspection, I find that section 17 of the Regulation details exactly how the inspection must be arranged as follows:

- (1) A landlord must offer to a tenant a first opportunity to schedule the condition inspection by proposing one or more dates and times.
- (2) If the tenant is not available at a time offered under subsection (1),
 - (a) the tenant may propose an alternative time to the landlord, who must consider this time prior to acting under paragraph (b), and
 - (b) the landlord must propose a second opportunity, different from the opportunity described in subsection (1), to the tenant by providing the tenant with a notice in the approved form.
- (3) When providing each other with an opportunity to schedule a condition inspection, the landlord and tenant must consider any reasonable time limitations of the other party that are known and that affect that party's availability to attend the inspection.

The Act states that the landlord must make the inspection and complete and sign the report without the tenant if

- (a) the landlord has complied with subsection (3), and
- (b) the tenant does not participate on either occasion.

In this instance, even if I accept that the tenant failed to cooperate with the landlord's attempts to schedule the move out condition Inspection, which would function to automatically extinguish the tenant's right to claim the security deposit, I find as a fact that the landlord's failure to comply with the Act and Regulations had already extinguished the landlord's right to claim the security deposit first, before the tenant had extinguished their right..

Given the above, I find that the landlord's right to claim against the tenant's security deposit for damages had been extinguished due to the noncompliant move in condition inspection report.

Accordingly I find that the landlord is not entitled to claim against the deposit and must refund the remainder of the tenant's security deposit in the amount of \$189.00.

Based on the evidence before me, I find that the landlord's application must be dismissed. I hereby issue a Monetary Order in favour of the tenant in the amount of \$189.00. This order must be served on the landlord and may be enforced through Small Claims if not paid.

Conclusion

The landlord is unsuccessful in the application. The landlord's the monetary claims for utilities and damages are dismissed and the tenant is granted a monetary order for the return of their remaining 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: July 29, 2013

Residential Tenancy Branch