



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding REMAX ELK VALLEY REALTY PM
and [tenant name suppressed to protect privacy]

Decision

Dispute Codes:

MND, MNDC, MNSD, FF

Introduction

This Dispute Resolution hearing was set to deal with an Application by the landlord for a monetary order for damage or loss under the Act.

Despite being served by registered mail sent on May 9, 2013 and again in mid-July 2013, the respondent did not appear.

Issue(s) to be Decided

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

Background and Evidence

The tenancy began on August 27, 2012 and ended on April 27, 2013. The rent was \$800.00 per month and the tenant paid a security deposit of \$400.00. The tenancy ended on April 27, 2013.

The landlord testified that when the tenant vacated, she failed to restore the deck which had been stained with paint. The landlord testified that he spent a significant amount of time trying to scrub the paint from the surface, but this was not successful. The landlord testified that the deck needs to be restored by professional technicians.

No copies of the tenancy agreement nor the move-in and move-out condition inspection reports were in evidence. However, the landlord submitted a written estimate of \$316.00, and photos of the paint-stained deck, into evidence. The landlord was seeking to retain the tenant's \$400.00 security deposit in compensation for the damages caused by the tenant.

Analysis

With respect 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 losses that result. Section 67 of the Act grants an arbitrator the authority to determine the amount of compensation, 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, 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.

Section 37 of the Act Section 37(2) of the Act also 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.

Given the above, I find that the landlord is entitled to total compensation of \$400.00 comprised of \$336.00 for the cost of professional restoration of the deck, \$14.00 in cleaning costs for the time he spent initially trying to restore the deck and the 50.00 cost of the application.

I hereby order that the landlord retain the tenant's \$400.00 security deposit in full satisfaction of the claim.

Conclusion

The landlord is successful in the application and is granted an order to retain the tenant's security deposit in full satisfaction of the monetary 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: August 06, 2013

Residential Tenancy Branch