



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CHAMPION DEVELOPMENT GROUP INC.
and [tenant name suppressed to protect privacy]

Decision

Dispute Codes:

MNDC, MNSD, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord for monetary compensation for cleaning and repairs.

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 evidence and testimony provided.

Issue(s) to be Decided

Is the landlord entitled to monetary compensation for cleaning and repairs?.

Background and Evidence

The tenancy began prior to this landlord taking ownership of the property and the tenancy is based on a verbal contract. The rent is \$1,250.00 and no security deposit was paid by the tenant. The tenancy ended on May 1, 2013.

The landlord testified that the tenant left the unit in need of \$1,200.00 for cleaning and \$2,500.00 for repairs including flooring and painting.

Submitted into evidence were photos of the unit taken by the landlord. The landlord testified that no move-in and move-out condition inspection reports were completed.

The tenant disputed the landlord's claims and pointed out that the rental unit was not in pristine condition when he took occupancy.

Analysis

In regard 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 landlord or tenant must compensate the other for damage or loss that results. Section 67 of the Act grants a dispute Resolution Officer the authority to determine the amount 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 reasonable steps to mitigate or minimize the loss or damage.

In this instance, the burden of proof is on the claimant, that being the landlord.

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.

In this instance, the landlord has alleged that the tenant left the unit damaged and not clean, while the tenant's position was that the unit was left in reasonably clean condition subject to normal wear and tear.

I find that the tenant's role in causing damages 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.

Sections 23(3) and 35 of the Act for the move-in and move-out inspections state that the landlord must complete a condition inspection report in accordance with the regulations and both the landlord and tenant must sign the report, after which the landlord must give the tenant a copy in accordance with the regulations. Part 3 of the Regulation goes into significant detail about the specific obligations regarding how and when the Start-of-Tenancy and End-of-Tenancy Condition Inspection Reports must be conducted.

In this instance I find that neither a move-in condition inspection report nor move-out condition inspection report was completed. I find the failure to comply with these sections of the Act has hindered the landlord from verifying the claim for compensation and prevented the monetary claim from satisfying elements 2 and 3 of the test for damages.

Given that all four elements of the test for damages have not been met, I find that the landlord's claim for damages must be dismissed.

I hereby dismiss the landlord's application without leave.

Conclusion

The landlord's application for damages is dismissed.

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 15, 2013

Residential Tenancy Branch

