



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

Decision

Dispute Codes:

MNSD, MNDC, MNR, MND, FF

Introduction

This Dispute Resolution hearing was set to deal with an Application by the landlord for a monetary order in compensation for rent, 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 affirmed testimony and relevant evidence that was properly served.

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 March 21, 2010. The rent was \$1500.00 plus \$150.00 for use of pastures. A security deposit of \$750.00 and pet damage deposit of \$750.00 had been paid.

At the start of the tenancy, a move-in condition inspection report was completed and a copy of the report is in evidence. The landlord testified that the tenant fell into arrears with the rent and a 10-Day Notice to End Tenancy for Unpaid Rent was issued and served. A copy of the 10-Day Notice dated November 30, 2011 was in evidence. The landlord testified that the tenant vacated the rental unit on December 30, 2011. The tenant testified that he vacated the unit in mid December 2011.

The landlord testified that the tenant did not pay rental arrears which included, \$365.00 for August 2011, \$1,650.00 for September 2011, \$1,650.00 for October 2011 and \$1,600.00 for November 2012. The landlord testified that the tenant did not pay all of

the rent for December 2012, and still owes \$1,000.00. The total claim is for \$6,265.00 for the rent.

The landlord testified that the tenant did not leave the rental unit in a reasonably clean condition and they had to spend 55 hours cleaning the interior at a cost of \$1,100.00, plus \$42.25 to purchase supplies. In addition, according to the landlord, the yard needed substantial cleanup, including removal of firewood at a cost of \$80.00 and removal of gravel costing \$800.00. The landlord calculated a credit to the tenant of \$380.00 for bathroom repair materials and the \$1,500.00 paid in security and pet damage deposits.

The tenant acknowledged that there were rental arrears owed, but did not agree with the cleaning and disposal costs being claimed by the landlord. The tenant also felt that the landlord should give the tenant additional credit for some of the labour that the tenant performed relating to the bathroom renovation and the painting. The tenant stated that the landlord should also reimburse the tenant \$500.00 for a lean-to structure that the tenant had built and left on the property.

The landlord pointed out that the bathroom renovations were permitted at the tenant's request and they had both agreed, at the time, that the landlord would only pay for the cost of materials. The landlord disputed the tenant's claim for the value of the painting as the tenant did not complete all of the work that was promised. The landlord stated that they are only willing to compensate the tenant a portion of the amount. The landlord stated that the partial painting was only valued at \$300.00. With respect to the lean-to structure, the landlord testified that he did not want this building and had given the tenant permission to remove it.

The landlord testified that an inspection was done at the end of the tenancy with the tenant present. A copy of the move-out condition inspection report was in evidence. However, the report was not completed nor signed.

Analysis

With respect to the rental arrears, I find that section 26 of the Act states that rent must be paid when it is due, under the tenancy agreement. Through testimony from both parties it has been established that the tenant did not pay the rent when it was due and the landlord is entitled to \$5,265.00 in rent including \$365.00 for August 2011, \$1,650.00 for September 2011, \$1,650.00 for October 2011 and \$1,600.00 for November 2011. With respect to the month of December, I accept the tenant's testimony that he had vacated by December 15, 2013 and therefore must compensate the landlord an additional \$250.00, beyond the \$500.00 already paid. I find that the total amount owed for the rental arrears is therefore \$5,515.00.

In regard to the landlord's claim for cleaning and repairs, I find that 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 32 of the Act contains provisions regarding both the landlord's and the tenant's obligations to repair and maintain. 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, and having regard to the age, character and location of the rental unit 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 residential property to which the tenant has access. While a tenant of a rental unit must repair damage to the rental unit caused by the actions or neglect of the tenant, this section of the Act specifies that a tenant is not required to make repairs for reasonable wear and tear.

Section 37 (2) of the Act states that, when a tenant vacates a rental unit, the tenant must leave the unit reasonably clean and undamaged except for reasonable wear and tear.

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.

In establishing whether or not the tenant had complied with this requirement, I find that this can best be shown through a comparison of the unit's condition when the tenancy began with the final condition of the unit after the tenancy ended. In other words,

through the submission of move-in and move-out condition inspection reports containing both party's signatures.

Section 23(3) of the Act covering move-in inspections, and section 35 of the Act for the move-out inspections, place 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, the parties both completed and signed the move-in condition inspection report. However, I find that the landlord failed to properly conduct a move-out condition inspection and did not complete the report as required under the Act and Regulations.

I find the failure to comply with section 35 of the Act has hindered the landlord's ability to establish the end-of-tenancy condition of the rental property.

Based on the evidence before me, I find that the landlord has not proven that the tenant failed to leave the rental unit reasonably clean. Therefore, I find that the portion of the landlord's application seeking compensation for cleaning costs must be dismissed.

In regard to the landlord's claim for disposal of the wood, I accept that the landlord did permit the tenant to bring the wood onto the property for use as fuel. I accept that most of the wood was removed by the tenant at the end of the tenancy. I find that, in order to meet element 4 of the test for damages, the landlord was required to make an attempt to mitigate the costs and losses, under section 7(2) of the Act. I find that the landlord could have chosen to use the remaining wood or could have merely left it there for the use of subsequent tenants. Accordingly I dismiss the landlord's claim for the \$80.00 cost of removing the wood.

In regard to the gravel removal costs, I find that the landlord did not offer sufficient evidentiary proof to confirm the cost of this removal. I find that this claim is also disputed by the tenant on the basis that the tenant was willing to assist in the removal, had the landlord cooperated. I find that the landlord did not meet the requirement under section 7(2) to make reasonable attempts to mitigate the damages by enlisting the tenant's help.

Given the above, I find that the landlord is entitled to total compensation of \$5,565.00 comprised of \$5,515.00 rental arrears and the \$50.00 cost of the application.

I find that the landlord is holding \$1,500.00 for the security deposit and pet damage deposit in trust for the tenant which must be granted as a credit to the tenant. In addition, I find that the tenant is entitled to be credited with \$380.00 for the cost of the

plumbing materials and \$450.00 in compensation for the partial painting work. The tenant's total monetary entitlement is \$2,330.00.

Accordingly, after setting off the \$2,330.00 owed to the tenant and the \$5,565.00 owed to the landlord, I find that the landlord is entitled to a monetary order for the remaining amount of \$3,235.00 comprised of I hereby grant a monetary order in favour of the landlord for \$3,235.00. This order must be served on the tenant and may be enforced through Small Claims Court if necessary.

Conclusion

The landlord is partially successful in the application and is granted a monetary order for rental arrears.

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 26, 2013

Residential Tenancy Branch

