



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

Decision

Dispute Codes:

MNSD, MNDC, FF

Introduction

This Dispute Resolution hearing was convened to deal with an Application by the landlord seeking \$400.00 cleaning costs and \$1,500.00 for one month rent in damages.

The hearing was also to deal with a cross application by the tenant for the return of the double the security deposit and reimbursement for time off work to attend the hearing.

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.

Issues to be Decided for the Landlord's Application

Is the landlord entitled to monetary compensation under section 67 of the *Act* for cleaning, repairs and loss of revenue?

Issues to be Decided for the Tenant's Application

Is the tenant is entitled to the return of double the security deposit?

Is the tenant entitled to compensation for lost time at work to attend the hearing?

Background and Evidence

The tenancy began in February 2013 with rent set at \$1,500.00 per month and a security deposit of \$750.00 was paid. No tenancy agreement was submitted into evidence. The tenancy ended on April 31, 2013.

According to the landlord both a move-in condition inspection and a move-out condition inspection had been done with the tenants. The landlord testified that they attempted to

conduct the final move out condition inspection on May 1, 2013, but the tenant had not finished cleaning and it was rescheduled for May 11, 2013. However no copies of the move-in or move-out condition inspection reports were in evidence.

The landlord did submit photos of the unit and gave verbal testimony about damage to the paint, carpets, dryer knob and failure to properly clean the oven.

In addition, the landlord submitted a printout of their banking information showing that a cheque for \$400.00 was apparently issued on May 21, 2013 to another renter in payment for cleaning the rental unit. No copy of supporting receipts or invoices were submitted. The landlord is claiming compensation for the \$400.00 in cleaning costs.

The landlord testified that they lost rental income because the tenant failed to give one month written notice that they were vacating the unit, as required by the Act. The landlord testified that the unit was re-rented to new tenants on May 11, 2013. The landlord is claiming \$1,500.00 for their losses, in addition to the \$400.00 cleaning costs.

The landlord provided testimony with respect to the tenant's conduct and activities during the tenancy but this was found not to be relevant to the monetary claim.

The tenant testified that the landlord was aware on March 31, 2013, that they were vacating the rental unit effective the end of April 2013.

The tenant testified that they left the rental unit reasonably clean and undamaged and felt that the landlord's claim for additional clean-up costs had no merit.

Analysis – Landlord's Monetary Claim

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 fails to comply with the Act, the regulations or 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 authority to determine the amount and order payment under the 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.
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 the tenant's role in causing damages could have best been established with a comparison of the unit 's condition before the tenancy began with the condition of the unit after the tenancy ended. In other words, through evidence using move-in and move-out condition inspection reports containing both party's signatures.

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

In this instance, I find that the landlord did conduct inspections, and I accept that the landlord was dissatisfied with certain deficiencies that they felt were caused by the tenants.

However, the landlord did not supply sufficient evidentiary proof in the form of move-in and move-out condition inspection reports to verify the total condition of the rental unit. I find the failure to comply with sections 23 and 35 of the Act has hindered the landlord's ability to establish what damages were caused by the tenant and did not pre-exist. Submitting complete reports are required to prove that the rental unit was not left reasonably clean and undamaged over all, which is the standard that is imposed by the Act.

I find that the landlord's claim for cleaning costs has also failed to meet element 3 of the test for damages as the landlord has failed to sufficiently prove that the expenditures related directly to payment for necessary cleaning or repair expenses.

Accordingly, I find that the landlord is not entitled to be compensated the \$400.00 costs claimed for cleaning.

With respect to the landlord's claim for loss of revenue, based on the tenant's failure to comply with the Act by giving one month written notice, I find that section 45 of the Act permits a tenant to end a periodic tenancy, but this must be done by giving the landlord written notice to end the tenancy effective on a date that:

(a) is not earlier than one month after the date the landlord receives the notice, and

(b) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

I accept the landlord's testimony that the tenant did not comply with the above section of the Act.

In assessing the amount of monetary loss incurred by the landlord caused by the tenant's violation, I find that the landlord did re-rent the unit on May 11, 2013 and therefore suffered a loss of 10 days rental revenue during the month of May 2013. I find that the pro-rated value of the loss of rent is approximately \$500.00, and the landlord is entitled to recoup this amount from the tenant.

Analysis: Tenant's Monetary Claims

In regard to the tenants claim for a refund of double the security deposit, I find that section 38 of the Act states that, within 15 days after the later of the day the tenancy ends, and the date the landlord receives the tenant's forwarding address in writing, the landlord must either repay the security deposit to the tenant or make an application for dispute resolution claiming against the security deposit.

The Act states that the landlord can only retain a deposit if the tenant agrees in writing the landlord can keep the deposit to satisfy a liability or obligation of the tenant, or if, after the end of the tenancy, the director orders that the landlord may retain the amount. I find that the tenant did not give the landlord written permission to keep the deposit.

Section 38(6) provides that If a landlord does not comply with the Act by refunding the deposit owed, or making an application to retain it within 15 days, the landlord may not make a claim against the security deposit, and must pay the tenant double the amount of the security deposit.

I find that the tenant's security deposit is \$750.00. However, the tenant has not sufficiently proven that they provided a written forwarding address to the landlord more than 15 days before the landlord made an application to keep the security deposit. Therefore, I find that the tenants are only entitled to a credit of \$750.00 for the deposit being held in trust by the landlord and are not entitled to \$1,500.00 as claimed.

In regard to the tenant's claim for loss of work valued at \$1,100.00 to attend the hearing, I find that, with the exception of the \$50.00 cost of filing the application, the tenant's claims for reimbursement for preparing for or attending the Dispute Resolution Hearing, are not compensable expenditures covered under any provision of the Act and must therefore be dismissed.

Based on the evidence before me, I find that the landlord is entitled to be compensated \$500.00 for the loss of revenue cause by insufficient Notice to vacate by the tenant and the tenant is entitled to compensation of \$750.00 for their security deposit.

In setting off these two amounts, I find that the remainder of \$250.00 is owed to the tenant. I hereby issue a monetary order in favour of the tenant for this amount. This order must be served on the Respondent and may be filed in the Supreme Court, (Small Claims), and enforced as an order of that Court if necessary.

As each party has been partially successful, I order that they each be responsible for their own costs of filing the application.

Conclusion

The landlord and the tenant are both partly successful in the application. The landlord is granted compensation for loss of revenue and the tenant is granted the remainder of their security deposit in a monetary order.

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*.

