



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding COMPLETE RESIDENTIAL PROPERTY MANAGEMENT LTD.
and [tenant name suppressed to protect privacy]

Decision

Dispute Codes:

MND, MNR, MNDC, MNSD, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord seeking a monetary order for loss of revenue caused by early termination of the fixed-term tenancy, reimbursement for carpet replacement and an order to retain the security deposit in partial satisfaction of the claim.

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 for loss of revenue and damages?

Preliminary Matter: Service of Applicant's Evidence

The landlord had submitted documentary evidence on file to support the landlord's claims. However, the tenant testified that this evidence was never received by the tenant. The landlord stated that the evidence was served on the tenant at the address provided by the tenant. However, the person who actually sent the evidence was not present to give testimony as this individual is longer employed by the landlord.

The evidence in question was also not found in the landlord's application file at the Residential Tenancy Branch.

The Residential Tenancy Rules of Procedure, Rule 3.1, requires that all evidence must be served on the respondent and Rule 3.4 requires that, to the extent possible, the applicant must file copies of all available documents, or other evidence at the same time

as the application is filed or if that is not possible, at least (5) days before the dispute resolution proceeding.

If the respondent intends to dispute an Application for Dispute Resolution, Rule 4 states that copies of all available documents, photographs, video or audio tape evidence the respondent intends to rely upon as evidence at the dispute resolution proceeding must be received by the Residential Tenancy Branch and served on the applicant as soon as possible and at least five (5) days before the dispute resolution proceeding but if the date of the dispute resolution proceeding does not allow the five (5) day requirement in a) to be met, then all of the respondent's evidence must be received by the Residential Tenancy Branch and served on the applicant at least two (2) days before the dispute resolution proceeding.

I note that the Landlord and Tenant Fact Sheet contained in the hearing package makes it clear that *"copies of all evidence from both the applicant and the respondent and/or written notice of evidence must be served on each other and received by RTB as soon as possible."*

The landlord offered to re-submit the evidence. However, this request was declined as it was contrary to the Rules of Procedure and would require an adjournment in order to give the tenant an opportunity to receive the documents. I found that this unfairly prejudice the respondent.

Given the above, I declined to accept or consider any evidence that was not properly served on the other party. However, the tenant's evidence package contained copies of many of the relevant documents, including those being relied upon by the landlord. Verbal testimony from both parties was also considered.

Background and Evidence

On December 4, 2012, this fixed-term tenancy, with expiry date of August 30, 2013, was assigned to this tenant by a previous tenant. The rent to be paid to the landlord under the contract was \$850.00 and the tenant paid a security deposit of 425.00 and pet damage deposit of \$425.00.

At the end of May 2013, the tenant advised the landlord in writing that she would be vacating on June 1, 2013, as she was required to relocate to a distant community for her employment. Both the tenant and the landlord commenced advertising for a new renter to take over the fixed term tenancy. The tenant paid rent for the month of June 2013.

The landlord testified that they were not successful in finding a new renter and therefore incurred a loss of \$850.00 for the month of July 2013 and \$850.00 for the month of August 2013, for a total loss of \$1,700.00, which is being claimed.

The landlord testified that a move-in inspection report was completed with participation by the tenant when she originally moved in. The landlord testified that a move-out condition inspection was completed in the absence of the tenant, after providing the tenant with 2 opportunities to schedule the inspection. According to the landlord, the first date proposed was June 28, 2013 and the final opportunity was proposed for July 15, 2013. The landlord testified that the tenant failed to participate. The landlord testified that the final inspection was actually completed on July 15, 2013 without the tenant.

The landlord testified that, although the carpets had not been clean when the tenant took over the tenancy in December 2012, the tenant had accepted this condition in taking over the tenancy. The landlord acknowledged that, at the end of the tenancy, the tenant had the carpets professionally cleaned and provided verification of this fact. The landlord testified that, despite the cleaning, there was still a strong odour of urine remaining afterwards and the landlord felt it necessary to replace the carpets. The landlord testified that the new carpeting was installed on July 5, 2013.

The landlord testified that, the original carpet was over 5 years old and had some stains and normal wear, but due to the urine smell, they were forced to replace it in order to re-rent the unit. The landlord pointed out that, during the carpet removal process, their installer found that animal urine had caused the carpet to adhere to the under pad and the floor. The landlord is claiming reimbursement for a pro-rated amount of 50% of the \$1,302.00 cost, and is claiming damages of \$651.00.

The tenant disputed the landlord's testimony that she failed to cooperate in scheduling the move out condition inspection. The tenant testified that the landlord was fully aware that she had a deadline to leave for her new job, and pointed out that she had repeatedly requested that a move out condition inspection be conducted *before* she had to leave. The tenant pointed out that she proposed that it occur on the final day of her tenancy On May 31 or June 1, 2013. The tenant testified that she also proposed an alternate date of June 17, 2013 when she would be back in town for a medical appointment. A copy of the tenant's communication on this subject was in evidence.

The tenant testified that the landlord declined all of these requests. The tenant stated that she even offered to have an agent participate in scheduling an inspection on her behalf. According to the tenant she was informed by the landlord, in writing, that they would not agree to schedule the final move-out inspection until a new tenant was found

to take over the lease, or until the expiry date of the original fixed term contract, which fell at the end of August 2013.

The tenant referenced a copy of a communication from the landlord in evidence that confirmed their position on scheduling the inspection. The tenant stated that despite being aware of her situation, the landlord failed to accommodate her circumstances and instead knowingly proposed unreasonable dates for the final inspection. The tenant argued that it was the landlord who did not cooperate in the inspection process.

The tenant also pointed out that the carpet was not in a clean state when she moved in and, in fact, was already stained, worn and damaged. The tenant testified that, as far as she could tell, there was no strong urine odour in the carpet while she resided in the unit. The tenant stated that her dog was fully house-trained and kept in a kennel when she was not home. The tenant stated that the evidence of older urine damage later discovered beneath the carpeting when it was removed by the contractor could have been caused by pets from other tenants in the past.

The tenant took issue with the fact that the landlord had already replaced the old carpeting with new carpeting *before* doing the final move out condition inspection.

Analysis

In regard to the landlord's claim for damages for noncompliance with the tenancy agreement, section 62 (1) of the Act grants a Dispute Resolution Officer the authority to determine any disputes in relation to matters that arise under the Act or a tenancy agreement. I find that the portion of the landlord's application dealing with the dispute over loss of revenue due to early termination before the end of the fixed term, relates to the tenancy agreement.

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.

Analysis: Loss of Revenue Claim

I find that the tenant did breach the tenancy agreement and is thus liable for loss of revenue incurred by the landlord. I accept the landlord's testimony that they did attempt to mitigate the loss by advertising for a replacement tenant, but suffered a proven loss of \$1,700.00 as a result of the tenant's breach. Therefore, I find that the landlord's claim meets all elements of the test for damages, and the landlord is entitled to be compensated \$1,700.00.

Analysis: Condition Inspections and Compensation for Carpet Replacement

In regard to the claim for damage to the carpets, 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 proving whether or not the tenant had complied with this requirement, I find that this can best be established with 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 properly conducted move-in and move-out condition inspection reports containing both party's signatures.

In this case, both parties both acknowledge that, during the *move in* condition inspection, the carpet was found not to be in a clean undamaged condition.

I find that, although the landlord is relying on the contents of the move out condition inspection report to support the claim that the tenant left the carpet in a severely damaged state, no comparison with the before and after state of the carpets can be made.

Moreover, I find that both parties did not participate in the move-out inspection as it was conducted in the tenant's absence. I find that, on July 15, 2013, when the move-out inspection was finally done, it is not surprising that the landlord found

the condition of the carpet to be deficient, since it was not in a pristine condition at the beginning of the tenancy.

In regard to the tenant's objection to the proposed schedule for the inspection, I find that section 35 of the Act states that the landlord and tenant together must inspect the condition of the rental unit, when the unit is empty of the tenant's possessions, before a new tenant begins to occupy the rental unit **on or after the day the tenant ceases to occupy the rental unit, or on another mutually agreed day.** (My emphasis)

Section 16(1) of the Residential Tenancy Regulations states that the landlord and tenant must attempt in good faith to mutually agree on a date and time for a condition inspection.

Section 17 of the Regulation further provides the following requirements:

- 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.** (My emphasis)

Given the above, I accept the tenant's testimony that the landlord did not properly consider the tenant's time limitations in refusing to conduct the inspection on the final day of the tenancy or, in the alternative, on the secondary date that was proposed by the tenant. I find that the landlord's proposed schedule clearly imposed hardship on the tenant.

I also find that there was no logical basis for the landlord to delay scheduling the move-out inspection until they succeeded in finding a new renter, or until the original expiry date of the fixed term. The landlord's stated position that the tenancy was not officially over until the expiry of the fixed term is not consistent

with the Act. Section 44(1) of the Act states that a tenancy ends only if one or more of the following applies:

(a) the tenant or landlord gives notice to end the tenancy in accordance with one of the following: (i) section 45 *[tenant's notice]*; (ii) section 46 *[landlord's notice: non-payment of rent]*; (iii) section 47 *[landlord's notice: cause]*; (iv) section 48 *[landlord's notice: end of employment]*; (v) section 49 *[landlord's notice: landlord's use of property]*; (vi) section 49.1 *[landlord's notice: tenant ceases to qualify]*; (vii) section 50 *[tenant may end tenancy early]*;

(b) the tenancy agreement is a fixed term tenancy agreement that provides that the tenant will vacate the rental unit on the date specified as the end of the tenancy;

(c) the landlord and tenant agree in writing to end the tenancy;

(d) the tenant vacates or abandons the rental unit; *(My emphasis)*

(e) the tenancy agreement is frustrated;

(f) the director orders that the tenancy is ended.

Based on the Act, I find that the final day of this tenancy was June 1, 2013 when the tenant permanently vacated the rental unit.

With respect to the landlord's claim for compensation for the carpet, I find that the landlord failed to present sufficient evidentiary proof that the carpet needed to be replaced, due to significant damage caused solely by this tenant.

In addition, I find that the landlord had already taken the step of replacing the carpet on July 5, 2013, *before* the landlord's proposed date for the final move-out inspection.

Given the above, I find that the landlord's claim for compensation for the damaged carpet does not satisfy all elements of the test for damages and loss. I therefore find that the landlord is not entitled to be reimbursed for the cost of replacing the carpet and this portion of the landlord's application must be dismissed.

Based on the evidence and testimony, I find that the landlord is entitled to total monetary compensation of \$ 1,750.00, comprised of \$1,700.00 for loss of revenue and the \$50.00 cost of the application. I order that the landlord retain the \$850.00 security and pet damage deposits, leaving a balance of \$900.00 owed to the landlord.

I hereby grant the landlord a monetary order for \$900.00. This order must be served on the Respondent by registered mail to the address provided by the tenant at the hearing and may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

The remainder of the landlord's application is dismissed without leave.

Conclusion

The landlord is partly successful in the application and is granted a monetary order against the tenant for loss of revenue due to premature termination of the fixed term tenancy.

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: October 01, 2013

Residential Tenancy Branch