



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

Decision

Dispute Codes:

OPR, MNSD, MND, MNDC, MNR, FF

Introduction

This Dispute Resolution hearing was set to deal with an Application by the landlord seeking an Order of Possession for unpaid rent. The landlord was also seeking to retain the tenant's security deposit and a monetary order for unpaid rent, cleaning, repairs, painting, supplies and loss of revenue for the month following the end of the tenancy.

The hearing was also convened on the tenant's application to determine the tenant's request to cancel a One-Month Notice to End Tenancy for Cause and to allow the tenant to reduce rent for repairs, services, or facilities agreed-upon but not provided.

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 make submissions during the hearing. I have considered all of the relevant evidence that was properly served.

Preliminary Matter

Order of Possession

Although the landlord's application indicated that the landlord was requesting an Order of Possession, at the outset of the hearing, the landlord stated that they are no longer seeking the Order of Possession as the tenant had already vacated the unit on November 1, 2013. Therefore the issue of an order to end the tenancy and the tenant's application seeking to cancel the Notice are now moot.

Amending the Tenant's Application

At the outset of the hearing, the tenant stated that the tenant had tried to amend their application to make a monetary claim for a retro-active rent abatement for mould, damages to the tenant's property and moving costs. According to the tenant, they did not include this monetary claim in the tenant's original application, because the tenancy was still in effect at that time. The tenant subsequently vacated on November 1, 2013 pursuant to a mutual agreement between the parties.

I find that the subject of the amendment is considered to be a separate and distinct matter from the issues now under dispute that are presently before me. I further find that the landlord was not properly informed in advance of the additional monetary claims being put forth by the tenant.

I find that the tenant's amended claim for a retro-active rent abatement, damages for lost possessions and reimbursement for the cost of moving due to mould, are not issues that would be integrated with the landlord's claims for monetary compensation for rent, loss of revenue and repairs filed under sections 7 and 67 of the Act and thus could be heard as a separate claim.

In any case, Residential Tenancy Rules of Procedure, Rule 2.5 states that an applicant may amend their own application without consent, if the dispute resolution proceeding has not yet commenced. If the applications have not yet been served on any respondents, the applicant must submit an amended copy to the Residential Tenancy Branch and then serve the amended application. If the application has already been served, and all requirements can be met to serve each respondent with an amended copy at least seven (7) days before the dispute resolution proceeding, the applicant may be permitted to file a revised application with the Residential Tenancy Branch. A copy of the revised application must be served on each respondent at least five (5) days before the scheduled date for dispute resolution proceeding. (My emphasis)

I find that the tenant was not able to amend the application in compliance with Rule 2.5 of the Residential Tenancy Rules of Procedure to add the monetary claims.

Accordingly, I find that the matters under dispute in the tenant's current application are moot and the tenant's additional monetary claims cannot be introduced and heard at this time. I therefore dismiss the tenant's application with leave to reapply so that the tenant can submit the monetary claim in a separate application.

Remaining Issue(s) to be Decided

Is the landlord entitled to monetary compensation under section 67 of the *Act* for rent, damages and losses?

Background and Evidence

The landlord testified that the tenancy began May 15, 2013 and ended on November 1, 2013, 2013 with rent of \$1,150.00 per month. A security deposit of \$575.00 was paid.

Submitted into evidence was a copy of the tenancy agreement, copies of the move-in and move-out condition inspection reports, photos, invoices, estimates, written testimony, copies of communications and a breakdown of the monetary claims.

The landlord testified that they attempted to show the unit to prospective renters during the final month of the tenancy, but the tenant refused to cooperate.

The landlord testified that the parties completed a move-in condition inspection report together at the start of the tenancy. The landlord testified that attempts were made to schedule the move-out condition inspection but no firm date was mutually agreed-upon. However, the landlord testified that they were aware that the tenant was moving out on November 1, 2013.

The tenant testified that they had confirmed their move-out date of November 1, 2013 with the landlord by telephone message. The tenant testified that they had never received any notification from the landlord about scheduling a move out condition inspection for November 1, 2013 or any other alternate date.

The landlord acknowledged that they did not serve the tenant with a written notification proposing a schedule to arrange the move out condition inspection. However, according to the landlord, they attended the rental unit on the tenant's final day expecting to complete the move-out condition inspection report at that time.

The landlord testified that the tenant did not cooperate and a physical confrontation ensued that involved police. The landlord stated that assault charges against the tenant are pending. The landlord testified that they later conducted the move out condition inspection without the tenant and found that the rental unit was left dirty and in need of numerous repairs.

The landlord listed the damages as follows:

- Replacement of locks
- Garbage removal
- Loss of deck umbrella and blinds
- Repair of disengaged portion of the screen on the door,

- Replacement of missing carpet trim on stairs
- Refinishing of wooden countertop
- Repair of scratched hardwood floors
- Wall repairs
- Replacement of bi-fold doors and tracks
- Replacement of missing and damaged blinds
- Damaged appliances including microwave handle and spray arm on dishwasher
- Repair to kitchen taps
- Damaged railing

The landlord is also claiming costs for cleaning walls, windows, floors and the stove. The landlord made reference to the move-out condition inspection report that was completed without the tenant's participation and also referred to photos that showed areas of the unit. Numerous receipts and invoices were also put forth to support the amount being claimed. The total claim by the landlord for cleaning, damages and rent loss is \$4,176.56.

The tenant denied that the unit was left dirty and testified that the rental unit was thoroughly cleaned by her mother and another relative.

The tenant also disputed the landlord's allegation that the unit was left in a damaged state by the tenant and pointed out that there were only some minor deficiencies in the condition of the unit when the tenant vacated. The tenant's position is that the unit was left reasonably clean and that the any damage left consisted of normal wear and tear, for which the landlord is not entitled to be compensated under the Act

With respect to the malfunctioning water tap and appliances, the tenant stated that these items, identified by the landlord as "damaged", were not misused nor vandalized by the tenants. The tenant believes that the landlord is responsible under the Act for repairs and maintenance of fixtures or appliances.

The tenant testified that on November 1, 2013, while the tenant was in the process of moving out, the landlord appeared at the unit accompanied by an associate and both of these individuals acted in a hostile confrontational manner towards the tenant that interfered with her efforts to move out. The tenant testified that she was physically assaulted by the landlord and a police report was made about the incident.

Analysis

In regard to the landlord's claim for rent owed for October 3013, I find that section 26 of the Act states that rent must be paid when it is due, under the tenancy agreement, whether or not the landlord complies with the Act, the Regulations or the tenancy

agreement. It was established through the evidence of both parties that the tenant withheld rent due on October 1, 2013. In this instance, I find that the tenant did not pay the rent when it was due and the landlord is entitled to compensation of \$1,150.00.

In regard to the landlord's claims for cleaning and repairs, I find 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.

In regard to the claim for the cleaning costs, 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 this instance, the move-in condition inspection report was completed properly. However, the landlord completed the move-out condition inspection report without the tenant's participation.

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

Move Out Inspection

I find that the tenant's role in causing damage can normally be established by comparing the condition *before* the tenancy began, with the condition of the unit *after* the tenancy ended through the submission of completed copies of the

move-in and move-out condition inspection reports featuring both party's signatures.

In this instance, the move out condition inspection report was completed in the tenant's absence. In some circumstances it is permitted to complete the report without the tenant, provided the process prescribed by the Act and Regulation is strictly followed.

I find that section 35 of the Act states that the landlord must offer the tenant at least 2 opportunities, as prescribed, for the inspection. Part 3 of the Regulations goes into significant detail about the specific obligations about how and when Condition Inspections and Reports must be conducted.

In this situation, I find that the landlord's allegation that the tenant failed to cooperate with the landlord's attempt to schedule a move-out condition inspection, was not sufficiently proven. Section 17 of the Regulation states that:

- (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.

The Act states that the landlord must make the inspection and complete and sign the report without the tenant if:

- (a) the landlord has complied with subsection (3) above, and
- (b) the tenant does not participate on either of the two dates mutually agreed-upon.

In this instance, I accept the tenant's testimony that they had never received proper written notification of the date and time tentatively scheduled for the

landlord's final inspection and were also not given an adequate opportunity to mutually schedule or reschedule the proposed date or time of the inspection.

I find that the landlord did not provide sufficient proof that the landlord had ever tried to mutually schedule an alternate time for the tenant to participate.

Given the flaws in the process, I find that the evidentiary weight of the landlord's inspection report is affected by the fact that both parties were not present during the move out condition inspection.

That being said, I find that the landlord submitted photographic evidence that shows there were some condition issues with the unit.

Cleaning

In regard to claim for cleaning, I find that the Act requires that a rental unit be left "reasonably clean". I accept that the limited areas specifically shown in the landlord's photos did not appear to be clean. However, I find it likely that the remainder of the rental unit, that was not shown in the photos, had likely been sufficiently cleaned. Therefore, with the exception of a few specific areas remaining that are not up to standard, I find that most of the rental unit would be considered to be "reasonably clean". I find that this unit would meet the standard required under the Act and the landlord is not entitled to be compensated for extra cleaning costs.

Repairs to Fixtures and Appliances

With respect to the fixtures and appliances, I accept the tenant's testimony that the Act places responsibility for maintenance and repair of fixtures, and appliances onto the landlord. I find that the landlord's claims for repairs to the appliances and fixtures must be dismissed.

Other Repairs

Awards for damages are intended to be restorative, meaning the award should place the applicant in the same financial position had the damage not occurred. Items and finishes have a limited useful life and this is recognized in Residential Tenancy Policy Guideline number 40 which lists the estimated useful life of interior and exterior finishes, items and fixtures.

In regard to scratches on the hardwood floors and minor dents or scrapes on the walls, I find that the photos indicate some marring but this would be expected as normal wear and tear during a tenancy.

With respect to the missing carpet trim on stairs, I find it is not clear exactly what kind of trim was used and whether it was suited for the purpose. I accept the tenant's testimony that this trim, consisting of some kind of cording, was not firmly secured along the edge of the stairway carpeting and when they snagged a loose end it resulted in the entire cord unraveling. I also find that the landlord only submitted a quote for the costs of repairs.

With respect to refinishing the damaged counter top, I find that, even with special care to avoid marking, the use of wood as a countertop surface installed adjacent to the sink and in a food preparation area, as shown in the photos, is more prone to damage than using a material such as laminate countertop that is more impervious to moisture and cuts. For this reason, I find the water rings left on the surface and cuts to the wood fall into the category of normal wear and tear. I find that the landlord also did not adequately prove the expenditure for the refinishing, as only a quote was submitted.

In regard to the damaged screen, I find that it is not possible to determine whether the screen could be re-secured or had to be completely replaced. The age of this door is not known. I also find that the landlord had merely secured a quote for the screen replacement costs.

In regard to the repairs to the bifold door, I find that the age of this item was not verified and there is no way to confirm whether or not the door had exceeded the average useful age. In addition, the photo shows that the door has come loose from the track, but does not show any evident damage to the door track.

In regard to the purchase of replacement blinds, I find that the landlord submitted what appears to be a printout from a web site, but it is not clear what was purchased, nor how much was actually spent. The landlord has also not sufficiently verified the age of the blinds.

Given the above, I find that the landlord's claims for the cost of repairs have not been sufficiently proven and fail to meet all four elements of the test for damages and must therefore be dismissed.

Garbage Removal

With respect to the cost of the garbage removal, I find that the two parties are in disagreement with this point. However, I accept that some garbage was not removed by the tenant. I accept the landlord and tenant's testimony that the garbage collection was paid for by the tenant under the tenancy agreement. The tenant testified that the landlord's claim for the garbage collection was excessive.

Although the invoice in evidence shows that the removal of the items in the photos cost \$35.00, I find that the billing is not clear enough for me to determine exactly what this charge is based upon.

Lock Replacement

In regard to the cost of replacing locks in a rental unit, I find that section 25 of the Act places the responsibility for the cost of changing the locks at the beginning, or end of the tenancy on the landlord. Section 25(1) states that at the request of a tenant at the start of a new tenancy, the landlord must

- (a) re-key or otherwise alter the locks so that keys or other means of access given to the previous tenant do not give access to the rental unit, and
- (b) pay all costs associated with the changes under paragraph (a).

Loss of Umbrella

With respect to the landlord's claim that the umbrella was missing, I find that the tenant disputed this allegation and stated that the umbrella top was stored on the property. In any case, find that the tenancy agreement makes no mention of the umbrella, nor the tenant's responsibility with respect to this item.

Based on the testimony and evidence I find that the landlord is entitled to compensation of \$1,150.00 for rent for the month of October 2013. I order that the landlord retain \$575.00 from the tenant's security deposit being held in trust by the landlord partial satisfaction of the claim. This leaves \$575.00 still outstanding to the landlord.

Accordingly, I hereby grant a monetary order in the amount of \$575.00 in favour of the landlord. This order must be served on the landlord and may be enforced in small claims court if necessary.

The remainder of the landlord's application for cleaning and repairs is dismissed without leave.

he tenant's application seeking to cancel the 10-Day Notice to End Tenancy for Unpaid Rent is moor as the tenancy has ended. The tenant's amendment to claim monetary compensation is dismissed with leave to reapply.

Conclusion

The landlord is partially successful in the monetary claim and is granted an order to retain the tenant's security deposit in partial satisfaction of the claim and a monetary order for the rest..

The tenant's application to cancel the 10-Day Notice to End Tenancy for Unpaid Rent is moot and the tenant's request to amend their application to add a monetary claim in damages is dismissed with leave to reapply.

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: November 19, 2013

Residential Tenancy Branch

