



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

Decision

Dispute Codes:

MND, MNR, MNSD, MNSD, FF

Introduction

This Dispute Resolution hearing was to deal with an Application by the landlord for a monetary order for compensation for damage or loss under the Residential Tenancy Act, (the Act), outstanding hydro utilities and an order to retain the security deposit in partial satisfaction of the claim.

The applicant was present and participated in the hearing. Despite being served with the Notice of Hearing documents in person on September 14, 2013, neither respondent appeared and the hearing was therefore conducted in the respondent's absence.

Issue(s) to be Decided

Is the landlord entitled to monetary compensation under section 67 of the *Act* for damages or loss and to retain the security deposit?

Background and Evidence

The landlord testified that tenancy began on June 1, 2012 for rent of \$650.00 and a \$325.00 security deposit was paid. The landlord testified that the tenants moved out on July 1, 2013, leaving the unit not reasonably clean and damaged.

The landlord testified that when the tenant moved in, a move-in condition inspection report was completed and the parties met to do the move-out inspection at the end of the tenancy. Copies of the move-in and move-out condition inspection reports are in evidence.

The landlord stated that the inspection report confirms that the unit was not left in a reasonably clean condition as required by the Act and supported this claim with photos of various areas of the unit.

In regard to cleaning, the landlord is claiming \$120.00 for four trips to the dump, 10 hours of cleaning using a two-person crew for \$400.00, yard cleanup costing \$80.00 and \$150.00 for the cost of renting a steam cleaner for the carpets

In regard to repairs, the landlord testified that the tenants destroyed window frames and removed doors and the landlord is claiming \$400.00 for the doors, \$400.00 for replacement windows and \$200.00 for 10 hours for labour, "*to fix unit*".

In addition to the above, the landlord is seeking \$301.20 unpaid hydro utilities. The landlord acknowledged that a claim for the cost of outstanding utilities was already heard at a previous hearing, but stated that there was an agreement for the tenants to pay once the landlord provides them a copy of the invoice.

Analysis

In regard to the cleaning costs and the cost of repairs, I find that 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 their 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 order payment in such circumstances.

I find that in order to justify payment of damages under section 67, the Applicant would be required to prove that the other party did not comply with the Act and that this non-compliance resulted in costs or losses to the Applicant, pursuant to section 7.

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.

Cleaning

Section 37 of the Act states, when a tenant vacates a rental unit, it must be left reasonably clean and undamaged except for reasonable wear and tear.

With respect to whether or not the landlord is entitled to costs for cleaning, I find that the unit was not left in a reasonably clean condition required by the Act, as evidenced by the photos. I find that the landlord has proven entitlement on a balance of probabilities for \$120.00 disposal costs, \$400.00 for cleaning and \$80.00 for yard cleanup.

In regard to the cost of renting a steam cleaner for the carpets, I find that the landlord did not submit any receipts to verify the \$150.00 rental cost. Accordingly, this portion of the claim fails to satisfy element 3 of the test for damages and must be dismissed.

The landlord is therefore granted \$600.00 for the cleaning and disposal costs.

Repairs

In regard to the claim of \$400.00 for window frames and \$400.00 for the cost of doors, destroyed or removed by the tenants, I find that, although the landlord testified that the actual cost exceeded that being claimed, the landlord has not provided receipts to verify any of the expenditures.

I find that 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. Where an item has a limited useful life, it is necessary to reduce the replacement cost by the depreciation of the original item. In order to estimate the pro-rated value of the replaced item, reference will be made to normal useful life of the item as provided in Residential Tenancy Policy Guideline 40.

According to the Policy Guideline, the average useful life for doors, windows and window frames is between 15 and 20 years. For this reason, I find that the landlord is not entitled to be reimbursed for the replacement cost as the doors and windows had likely exceeded their useful life.

With respect to the claimed cost of \$200.00 to “fix the unit”, I find that there is insufficient details about the specific tasks. Because the cost of replacing the doors and windows was not granted, any labour for these jobs would also not be granted. However, I find that the landlord described damage to a ceiling fan that had been pulled away from the ceiling and this was confirmed by the move-out condition inspection report. I find that this would need to be re-installed and there would also be repairs to holes in the walls. Accordingly, I grant the landlord \$125.00 for the labour costs of repairs.

Hydro Utilities

With respect to the landlord's claim for utility arrears, I find that I find that the landlord's request for monetary compensation relating to the hydro utility bills owed by the tenants, was an issue that was already heard and determined at a previous hearing.

In a decision dated July 17, 2013, the arbitrator states,

"In the absence of any evidence to show what, if any, utilities outstanding, I am not willing to issue any order in favor of the landlords"

The arbitrator then goes on to state,

"This application is dismissed in full without leave to reapply;" (My emphasis)

Section 77 of the Act states that, except as otherwise provided in the Act, a decision or an order of the dispute resolution officer is final and binding on the parties. I find that the landlord's claim for utility arrears was officially determined at the earlier hearing is therefore final and binding on the parties.

The landlord's claim for utilities was dismissed without leave to reapply. Therefore I find that, to consider this matter again would violate the principal of *res judicata*. Res judicata is a rule in law establishing that a final decision, determined by an Officer with proper jurisdiction and made on the merits of the claim constitutes an absolute bar to any subsequent application involving the same claim or issues.

Accordingly, I decline authority to rule on this matter and this portion of the landlord's application must be dismissed.

I find that the landlord is entitled to total monetary compensation of \$775.00, including \$600.00 for cleaning costs, \$125.00 for repairs and the \$50.00 cost of this application.

I order that the landlord retain the tenant's \$325.00 security deposit in partial satisfaction of the claim, leaving \$450.00 still outstanding. 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.

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

Conclusion

The landlord is partly successful in the application and is granted an order to retain the amount from the tenant's security deposit, the remainder of which was granted to the landlord through an enforceable 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*.

Dated: December 18, 2013

Residential Tenancy Branch

