



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding HOMELIFE PENINSULA PROPERTY MANAGEMENT
and [tenant name suppressed to protect privacy]

Decision

Dispute Codes:

MND, 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), and an order to retain part of the security deposit in 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.

Preliminary Matter: Missing Evidence

The landlord's 43 pages of evidence, confirmed as being faxed into Residential Tenancy Branch on October 22, 2013, were missing from the file. The respondent tenant confirmed that they had been served with the evidence, however, the documents were not in the file, nor were they scanned and uploaded to the electronic file.

In order not to delay this matter through an adjournment for the purpose of allowing the landlord to re-submit the missing evidence, I found that the matter should proceed as scheduled and a short break in the proceedings was imposed to allow the landlord to re-fax the crucial evidence directly to the Branch.

After the documents arrived by fax, the hearing continued and the evidence was duly considered.

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 amount claimed from the security deposit?

Background and Evidence

The tenancy began on August 1, 2012 with rent of \$3,300.00 and a \$1,650.00 security deposit was paid. The landlord testified that the tenants moved out on September 30, 2013, leaving the unit not reasonably clean and requiring landscaping.

The landlord testified that, when the tenants moved in, a move-in condition inspection report was completed and the parties also completed a 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 testified that deficiencies in the unit are documented in the move-out condition inspection report and verified by receipts in evidence. In regard to the monetary claims, the landlord is seeking compensation of \$250.00 for 10 hours of cleaning, \$47.25 to cut the lawn, \$140.00 for rubbish removal and \$30.89 for light bulbs.

The landlord stated that the move out inspection report indicates that windows were not cleaned and the basement, shed, some cabinets and the garage floor were not clean. In addition, some light bulbs needed to be replaced. The landlord pointed out that, on the report, there is a notation that the lawn required trimming.

With respect to the claim for cleaning, the landlord submitted a document dated October 2, 2013, that indicates the landlord had granted the new tenant taking possession of the unit \$250.00 to be paid out of the vacating tenant's security deposit.

The above form is titled, "*CREDIT/INVOICE*" and under the heading, "*Description/Reason*" there is a written notation stating that the new tenants,

"have chosen to have own cleaners" (Reproduced as written)

On the move-out condition inspection report form, the tenants indicated that they disagreed with the inspection report that alleges the unit needed cleaning and that the grass required mowing.

The tenant testified that they were required to clean the unit when they moved in and were compensated. In addition, the tenants stated that there were numerous deficiencies that the landlord failed to rectify until the tenants sought dispute resolution.

The tenant testified that they have high standards for the maintenance of their home and they used the same cleaning company to regularly clean the premises. The tenant testified that they hired this company to complete the final move-out cleaning. The tenant pointed out that they have used this company for years because they are very thorough and the tenant stated that the level of cleanliness more than met the “reasonably clean” standard imposed by the Act.

The tenant submitted a copy of a letter from the director of the cleaning firm that confirms the unit was cleaned on September 30, 2013 and that,

“12 person hours of work was undertaken with particular focus on windows, window blinds, window sills, kitchen cabinets, stove and floors” (Reproduced as written)

The tenant testified that, just before they vacated, they also engaged qualified landscaping professionals to take care of the grounds and bring them to a higher standard than when they took occupancy in August 2012. The tenant referred to an invoice in evidence confirming that the tenant paid a contractor \$446.25 for yard clean-up, on September 26, 2013. The invoice indicates that the work included,

“lawn mowing and trimming, weeding and general garden bed cleanup” (Reproduced as written)

The landlord disputed that the lawn was sufficiently trimmed and, in addition to the notations of the move-out condition inspection report, the landlord referred to an invoice from a contractor, dated October 10, 2013. The invoice indicated that the bill for \$47.25 related to,

“CUTTING OF GRASS AND EDGING” (Reproduced as written)

The landlord feels entitled to be reimbursed for this cost.

In addition to the above, the landlord is seeking compensation of \$140.00 for removal of debris allegedly left by the tenant. The landlord submitted an invoice from a construction contractor with the notation below,

“Replaced several burnt out bulbs. Reinstalled bifold door in basement. Removed rubbish from outside. 2.5 Hrs. X 47.50/hr” (Reproduced as written)

The charges shown on the invoice are \$118.75 for labour and \$44.00 for the materials/dump fee, plus tax, for a total charge of \$170.89.

The tenant disagreed with the charges for rubbish removal on the basis that the items in question were not required to be removed by the tenant as the refuse was already on the property before they began the tenancy.

The tenants disagree with all of the landlord's claims, which they categorized as "ridiculous".

Analysis

In regard to the cleaning costs and the cost of debris removal, 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 tenant has produced tangible evidence that the rental unit was left in a reasonably clean condition as required by the Act.

Accordingly, I find that the landlord's claim for the \$250.00 they had credited to the new tenant for cleaning, must be dismissed.

Landscaping

With respect to the landlord's claim for \$47.25 compensation for the cost of cutting the grass on October 10, 2013, I find that the tenant did arrange that the yard work be completed by landscaping professionals close to their final day in the unit. I find that the tenant did not agree with the landlord's notation on the move-out condition inspection report completed four days later that indicates the lawn needed to be trimmed. I also find that the grass-cutting being charged to the tenant occurred ten days after the tenancy had ended.

Disposal

In regard to the landlord's claim for entitlement to be reimbursed \$140.00 for the cost of disposal, I find that, on a balance of probabilities, the costs incurred likely related to removal of items that did not belong to these tenants. Accordingly, I find that the landlord is not entitled to be compensated for the disposal costs.

Light Bulbs

With respect to the charges for light-bulb replacement, I find that the landlord's invoice documenting the labour and material charges for this specific task is not sufficiently clear and there is no way to determine how many light bulbs were involved. For this reason, I find that the landlord's claim of \$30.89 for replacing light bulbs must be dismissed.

Based on the evidence before me, I find that the landlord has not sufficiently proven the monetary claim and failed to satisfy all elements of the test for damages. For this reason, I hereby dismiss the landlord's application in its entirety without leave to reapply

I order that the landlord refund the tenant's \$1,650.00 security deposit and grant the tenant a monetary order for \$1,650.00. This order must be served on the landlord and may be filed in the Supreme Court, (Small Claims), and enforced as an order of that Court.

Conclusion

The landlord is not successful in the application and the tenant is therefore granted a monetary order for the return of the tenant's security deposit in full.

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: January 15, 2014

Residential Tenancy Branch

