



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

Decision

Dispute Codes:

MND, MNDC, MNSD, O, FF

Introduction

This Dispute Resolution hearing was convened to deal with an Application by the landlord for a monetary order for damage to the unit due to a fire caused by the tenant.

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 for the Landlord's Application

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 tenancy began approximately 4 years ago at which time a security deposit of \$500.00 was paid. On June 13, 2013 a fire occurred and the tenants had to vacate the unit. The tenant provided written Notice to the landlord that they were terminating the tenancy as of June 19, 2013. The tenant testified that the landlord was provided with their written forwarding address at that time.

The landlord testified that the tenants left a substantial amount of personal property on site and the landlord is claiming disposal fees they incurred in the amount of \$1,200.00.

In addition, the landlord's application states that they are seeking;

“cash disbursement to remove mattresses, sofas, cleaning the yard propane tanks, tires, trampoline tents kids water pools some tools, metal cabinet, some garden supplies” (Reproduced as written)

The landlord testified that reports about the incident indicate that the tenants were responsible for causing the fire. The landlord had submitted copies of reports from the municipal fire service and investigation reports from the landlord's insurance company.

Although the landlord was insured for damage to the building caused by the fire, the landlord is claiming compensation for their deductible amount of \$1,000.00, that the landlord had to pay out-of-pocket.

The landlord stated that the tenant's should have purchased their own insurance to cover the remaining costs.

The landlord pointed out that her insurance premiums were also increased by \$172.00 per month due to filing this claim. The landlord is seeking compensation for the higher insurance premiums.

The landlord submitted copies of communications, reports, photos and invoices into evidence to support the \$3,000.00 claim.

The tenants dispute the landlord's monetary claims. The tenant pointed out that there was no conclusive determination made in any of the reports that the tenants were solely responsible for the fire.

The tenants made a reference to a report from the municipal fire service that the landlord had submitted into evidence. The tenant noted that, on this document, beside the line, “*Material First Ignited*” , a notation was made stating:

“*Cannot be determined*”

The tenant also observed that beside the line “*Act or Omission*” someone had completely blacked out the notation.

The tenant's position is that the landlord's insurance deductible amount and other insurance costs are not a liability that should be charged to the tenants because there is not any proof that the tenants were in violation of the Residential Tenancy Act.

The tenant testified that there is also no term in their tenancy agreement that required them to have their own insurance. The tenant pointed out that they have not made any claims against the landlord for the disruption of their tenancy nor the loss of their property.

In regard to the removal and disposal costs being claimed against the tenants, the tenants acknowledged that they followed the landlord's instructions to immediately remove all of their possessions and place them outside the building.

The tenant testified that their access to the unit was limited and the landlord did not give them sufficient time to ever retrieve their items or arrange for their disposal. The tenant testified that the landlord had also placed a large number of items, from the landlord's portion of the residence, out in the yard and most of the garbage removal charges related to these other items belonging to the landlords.

The tenants also pointed out that the unit was no longer inhabitable after the fire occurred and they were forced to leave on short notice. According to the tenant, to facilitate the repairs and accommodate the landlord, they chose to permanently vacate the unit so the renovations could proceed. The tenant pointed out that they actually vacated in mid-June 2013, despite having paid for the entire month.

Analysis

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 does not comply with this 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.

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.

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 tenant. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the

loss or damage. Finally it must be proven that the claimant did everything possible to mitigate the damage or losses that were incurred.

Section 32 of the Act contains provisions regarding both the landlord's and the tenant's obligations to repair and maintain. A landlord must provide and maintain residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law, and having regard to the age, character and location of the rental unit to make it suitable for occupation by a tenant.

A tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the residential property to which the tenant has access. While a tenant of a rental unit must pay for or repair damage to the rental unit caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant, a tenant is not required to make repairs for reasonable wear and tear or for damage that was not caused by the tenant.

The landlord has alleged that the tenant caused the fire damage in violation of the Act. However, I find that a violation of section 32 of the Act would only apply to this kind of situation if the tenant was proven to be solely responsible for the damage and refused to repair it.

In this instance, on reviewing the content of the reports, I accept the tenant's testimony that it was never clearly established in any of the reports that they were responsible for the fire through an intentional nor negligent action on the tenant's part.

Given the above, I find that the evidence presented by the landlord is not sufficient to satisfy element 2 of the test for damages, above.

I also find that the landlord's claim does not meet element 3 of the test for damages, because the evidence submitted to justify the costs was challenged by the tenant and was not sufficiently detailed to properly verify the expenditures being claimed.

Based on the testimony and evidence presented during these proceedings, I find that under the Act, the landlord's monetary claims have no merit and must be dismissed.

Accordingly, I hereby dismiss the landlord's application in its entirety without leave to reapply.

Conclusion

The landlord is not successful in the application and the monetary claim is dismissed without leave.

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 28, 2014

Residential Tenancy Branch

