



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

Decision

Dispute Codes: MNSD, MND, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord for a monetary order for cleaning and repairs to the suite and loss of rent.

The landlord appeared but the tenant did not appear. The landlord testified that the tenants was served with the hearing package and photos by registered mail and had submitted proof of service by providing the tracking number from Canada Post.

Issue(s) to be Decided

Is the landlord entitled to monetary compensation for cleaning and repairs and other damages including loss of revenue?

Preliminary Matter

The landlord had filed to application on November 3, 2014 and had included a detailed breakdown of the monetary claim and some photographs.

The landlord sent in an amended claim and the remainder of the landlord's evidence to the Residential Tenancy Branch on February 6, 2014 and also served this to the tenant by registered mail mailed on February 7, 2014. Records indicate that the tenant retrieved the registered mail on February 14, 2014.

Rule 3.5 of the Residential Tenancy Proceedings Rules of Procedure, 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.

Rule 4.1 of the Residential Tenancy Proceedings Rules of Procedure states that if the Respondent intends to dispute an application, the evidence upon which the Respondent intends to rely must be received as soon as possible and **at least 5 days before the dispute resolution hearing** or if that is not possible, the evidence must be filed with the

Residential Tenancy Branch and received by the Respondent at least 2 days prior to the hearing. (my emphasis)

The “*Definitions*” portion of the Rules of Procedure states that when the number of days is qualified by the term “*at least*” then the first and last days must be excluded. Evidence served on a business, must be served on the previous business day. In addition, weekends or holidays are excluded in the calculation of days for evidence being served on the Residential Tenancy Branch.

In this instance I find that the tenant, having received the evidence package on February 17, 2014, would not have sufficient time to serve the landlord and Residential Tenancy Branch with documentary evidence in response to the landlord's monetary claims.

Accordingly, the landlord's evidence package submitted in February 2014, will not be considered as I find that it was not received by the respondent tenant in time for the tenant to mail in their own evidence.

Accordingly, this evidence was not taken into consideration in the determination of this dispute. However verbal testimony provided by the landlord relating to the content of the late evidence was accepted and considered.

Background and Evidence

The tenancy began on April 8, 2012 \$780.00 and rent was \$750.00. Deposits, including a security deposit of \$390.00 and a pet damage deposit of \$200.00 were paid.

The landlord testified that the tenancy was terminated by the tenant who gave notice on October 8, 2013 to vacate effective the end of November 2013. The landlord testified that the unit was immediately marketed but the landlord incurred a loss of December 2013 rent in the amount of \$780.00, which is being claimed.

In addition to the above, the landlord is claiming the following:

- \$850.00 for painting
- \$1,600.00 for new carpeting
- \$350.00 for tubsurround replacement
- \$320.00 to replace the kitchen floor
- \$80.00 for cleaning the range and oven
- \$50.00 to replace a missing light fixture
- \$100.00 to re-caulk corners and edges of the walls and baseboards

The landlord gave verbal testimony of the above and furnished photos of the alleged damage to the rental unit.

Analysis

With respect to the landlord's claim for the loss of revenue for the month of December 2013, I find that a Applicant's right to claim damages from another party is dealt with under section 7 of the Act which states that if a landlord or tenant does not comply with the Act, the regulations or the tenancy agreement, the non-complying party must compensate the other for damage or loss that results. Section 67 of the Act grants an Arbitrator the authority to determine the amount and to order payment under these circumstances.

In a claim for damage or loss under the Act, the party making the claim 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, I find that the landlord is required to prove the existence and value of the damage or loss stemming directly from a violation of the agreement or a contravention of the Act by the respondent and to verify that a reasonable attempt was made to mitigate the damage or losses incurred.

Section 45 of the Act permits a tenant to end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that

(a) is not earlier than one month after the date the landlord receives the notice,
and

(b) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

I accept the landlord's testimony that the tenant did not give one full month notice to vacate and that the landlord commenced marketing the unit immediately after the tenant gave Notice on October 8, 2013 to be effective October 31, 2013. I also accept that the landlord was not successful in finding a tenant for the month of December 2013 and suffered a loss due to the vacancy.

Accordingly, I find that the claim for loss of revenue meets all elements of the test for damages and the landlord is entitled to be compensated \$780.00 for the loss.

In regard to the landlord's claims for cleaning of the interior, 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, I find that the tenant was compliant with section 37 of the Act in that the unit was left reasonably clean except for the stove.

I accept the landlord's claim for \$50.00 compensation for a missing light fixture that had apparently been removed by the tenant, leaving only the cover.

With respect to the remaining claims, I find that, in determining whether or not the tenant had complied with section 37 of the Act, I find that this 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 move-in and move-out condition inspection reports containing both party's signatures. Section 23(3) of the Act covering move-in inspections and section 35 of the Act for the move-out inspections places the obligation on the landlord to complete the condition inspection report in accordance with the regulations and both the landlord and tenant must sign the condition inspection report after which the landlord must give the tenant a copy of that report in accordance with the regulations.

In this instance, the majority of the landlord's evidence was excluded for being too late. Therefore neither a move-in condition inspection report nor move-out condition inspection report had properly been placed into evidence. I find the absence of the move-in and move-out condition inspection reports and other evidence has hindered the landlord's ability to establish a comparison of the start and end-of-tenancy condition.

In addition, I find that the landlord did not sufficiently prove the cost of the claimed repairs.

Given the above, I find that the landlord's claims for reimbursement for \$850.00 for painting, \$1,600.00 cost of new carpeting, \$350.00 for tub surround replacement, \$320.00 to replace the kitchen floor and \$100.00 to re-caulk corners and edges of the

walls and baseboards, failed to satisfy all elements of the test for damages above and must be dismissed.

Given the above, I find that the landlord has established total monetary entitlement of \$1,030.00, comprised of \$780.00 loss of revenue, \$50.00 for the missing light fixture, \$150.00 for carpet cleaning and the \$50.00 paid for this application.

I order that the landlord retain the tenant's \$390.00 security deposit and \$200.00 pet damage deposit in partial satisfaction of the claim leaving a balance of \$440.00 in favour of the landlord.

I hereby grant the Landlord an order under section 67 for \$440.00. This order must be served on the Respondent 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 for loss of revenue and repairs.

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: February 17, 2014

Residential Tenancy Branch

