



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

Decision

Dispute Codes: MNDC, MNR, MNSD, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord for a monetary order for reimbursement for cleaning costs, carpet cleaning and garbage removal.

Despite being served by registered mail sent on November 26, 2013, the respondent did not appear.

Issue(s) to be Decided

Is the landlord is entitled to monetary compensation for cleaning, repairs and garbage removal?

Background and Evidence

The tenancy began on August 1, 2012 and ended on October 31, 2013. Rent was \$1,350.00. A security deposit of \$675.00 was paid. A copy of the tenancy agreement, move-in and move-out condition inspection reports, photos and receipts were submitted into evidence.

The landlord testified that the tenant was in arrears for rent in the amount of \$750.00 when they vacated. The landlord testified that the tenant moved out without leaving the unit reasonably clean and in good repair. The landlord testified that the landlord incurred costs of \$2,163.00 for general cleaning, repairs, garbage disposal fees, new carpeting and supplies that included the installation of a new baseboard heater, repainting and replacement doors. The landlord submitted a copy of the move-in and move-out condition inspection reports ,invoices and receipts, photos and copies of communications.

No evidence was submitted by the tenant.

Analysis

With respect to the rent owed in the amount of \$750.00, 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 this Act, the regulations or the tenancy agreement. I accept the landlord's testimony that the tenant did not pay the rent when it was due and find that the landlord is entitled to compensation of \$750.00 in rent.

For damages being claimed, I find that an 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.

With respect to the cleaning and repair claims, 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 establishing whether or not the tenant had complied with this requirement, I find that this can best 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 valid 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 landlord submitted a move-in condition inspection report signed by the tenant and a move-out condition inspection report *not signed* by the tenant.

With respect to the move out inspection, I accept that the tenant failed to participate in this process. However, I find that section 35 of the Act states that, before the landlord completes the move-out condition inspection report without the tenant in attendance, the landlord must first offer the tenant at least 2 opportunities, as prescribed, for the inspection. Part 3 of the Regulation goes into significant detail about the specific obligations regarding how and when the Start-of-Tenancy and End-of-Tenancy Condition Inspections and Reports must be conducted and 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), and

(b) the tenant does not participate on either occasion.

(My emphasis)

Section 36 (2) of the Act states that the right of the landlord to claim against a security deposit, for damage to residential property is extinguished if the landlord does not comply with section 35 (2) [*2 opportunities for inspection*],

In this instance, I find that no evidence was presented by the landlord to indicate that the landlord had ever offered the tenant two opportunities to do the move-out inspection. I also find that the landlord did not submit verification that the landlord had offered the tenant a final opportunity to participate in the move out condition inspection on the approved form.

I find the landlord's failure to comply with section 35 of the Act has hindered the landlord's ability to establish the end-of-tenancy condition and therefore I find that, in order to support a claim for compensation, the landlord's other evidence must suffice to prove on a balance of probabilities that the tenant violated the Act by leaving the rental unit not reasonably clean and in good repair and that the landlord incurred costs of these repairs and cleaning.

The testimony provided by the landlord during the hearing indicated that the landlord is claiming \$650.00 for labour for cleaning and repairs, \$416.00 for garbage removal, \$610.00 reimbursement for supplies including passage doors, bi-fold doors, paint, carpet, a baseboard heater and new carpeting.

However, although the landlord submitted photos and receipts, I find that the landlord did not fill out a "*Monetary Order Worksheet*" nor did the landlord provide an itemized breakdown listing each item and claim along with the relevant expenses.

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.

I also find that the tenant failed to submit receipts in support of some of the claims.

However, despite the above irregularities, based on the evidence provided I find the tenant failed to comply with section 37 of the Act and therefore the landlord should be compensated. I grant the landlord compensation in the amount of \$300.00 for cleaning, \$300.00 for the replacement carpeting, \$300.00 towards materials and supplies and \$200.00 for the garbage disposal.

Given the above, I find that the landlord has proven entitlement for a total monetary claim of \$1,900.00 comprised of \$750.00 for rent, \$1,100.00 for cleaning and repairs and the \$50.00 paid for this application.

I order that the landlord retain the tenant's security deposit of \$675.00 in partial satisfaction of the claim, leaving a balance of \$1,225.00 in favour of the landlord.

I hereby grant the Landlord an order under section 67 for \$1,225.00. 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

Conclusion

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

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: March 17, 2014

Residential Tenancy Branch

