



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding TRG REALTY (APPLICANT LANDLORD) & TOYO PUMPS NORTH AMERICA CORP, RESPONDENT TENANT)
and [tenant name suppressed to protect privacy]

Decision

Dispute Codes: MNDC, MNSD, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord for monetary compensation for cleaning and repairs.

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 evidence and testimony provided.

Issue(s) to be Decided

Is the landlord entitled to monetary compensation for cleaning and repairs?.

Preliminary Matter: Evidence

The tenant objected that they did not have sufficient time to review or respond to the landlord's evidence package as it was not served on the Residential Tenancy Branch and the tenant until June 4, 2014. The tenant made the application for Dispute Resolution more than one month earlier, on April 14, 2014.

Rule 3.4 of the *Residential Tenancy Branch Rules of Procedure* require, to the extent possible, that an applicant file copies of all available documents, photographs, video or audio evidence at the same time as the application is filed.

Rule 3.5 of the *Residential Tenancy Branch Rules of Procedure* states that:

- a) Copies of any documents, photographs, video or audio evidence that are not available to be filed with the application, but which the applicant intends to rely upon as evidence at the dispute resolution proceeding, must be received by the Residential Tenancy Branch and must be served on the respondent as soon as

possible, and at least (5) days before the dispute resolution proceeding as those days are defined in the "Definitions" part of the Rules.

- b) If the time between the filing of the application and the date of the dispute resolution proceeding does not allow the five (5) day requirement of a) to be met, then the evidence must be received by the Residential Tenancy Branch and served on the respondent at least two (2) days before the dispute resolution proceeding.
- c) If copies of the applicant's evidence are not received by the Residential Tenancy Branch or served on the respondent as required, the arbitrator must apply Rule 11.5 [Consideration of evidence not provided to the other party or the RTB in advance of the dispute resolution proceeding].

In the case before me, because the tenant testified that they only received the evidence on June 4, 2014 with the hearing scheduled to take place on June 9, 2014, I find that, although the landlord had technically complied with the statutory requirements under the Act with respect to the deadline for serving evidence, the tenant would be prejudiced by accepting and considering the landlord's delayed evidence.

The question is whether or not the tenant was unfairly prejudiced by the short time frame left to submit a response to the landlord's evidence package.

To accommodate the situation, I determined that the landlord's evidence package would not be considered. However, the landlord was permitted to give verbal testimony describing the various documents in their evidence package and the tenant was permitted to verbally respond to the verbal evidence.

Background and Evidence

The tenancy began in December 2011 and ended on January 31, 2014. The rent is \$1,600.00 per month and a security deposit of \$800.00 was paid by the tenant.

According to the landlord, the rental unit was in pristine condition when the tenant first moved in. The landlord testified that, when the tenancy ended, the tenant left the unit in need of cleaning and repairs. This included re-grouting the floor and painting the unit to remove urine odours caused by the tenant keeping a dog in the unit, contrary to the terms of the tenancy agreement. The landlord seeks compensation for the costs.

In addition to the costs of cleaning and repairs, the landlord is seeking \$1,600.00 for a loss of rent for February 2014, due to the landlord's inability to re-rent the unit because of the condition in which the tenant left the unit. The total monetary claim is \$3,160.00, including the cost of the application.

The tenant testified that no dog ever resided in the unit, but they did allow a dog to be in the suite when the tenant's friend was visiting. The tenant testified that there was no residual damage left by this dog. The tenant pointed out that the rental unit was professionally cleaned at the end of the tenancy. The tenant disputed the landlord's claims and stated that no compensation is warranted.

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 the Act, the regulations or the 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 to order payment under these 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 reasonable steps to mitigate or minimize the loss or damage.

In this instance, the burden of proof is on the claimant, that being the landlord.

Section 37(2) of the Act states that, when a tenant vacates a rental unit, they must leave the rental unit reasonably clean and undamaged except for reasonable wear and tear.

The landlord has alleged that the tenant left the unit damaged and not clean, while the tenant's position was that the unit was left in reasonably clean condition subject to normal wear and tear.

I find that the tenant's role in causing damages can normally be proven through a comparison of the condition before the tenancy began with the condition of the unit after the tenancy ended. In other words, through the submission of completed copies of the move-in and move-out condition inspection reports featuring both party's signatures.

Sections 23(3) and 35 of the Act for the move-in and move-out inspections state that the landlord must complete a condition inspection report in accordance with the regulations and both the landlord and tenant must sign the report, after which the landlord must give the tenant a copy in accordance with the regulations. 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 Inspection Reports must be conducted.

In this instance I find that neither a move-in condition inspection report nor move-out inspection report was submitted. I find the failure to comply with these sections of the Act has hindered the landlord from verifying the claim for compensation and prevented the monetary claim from satisfying elements 2 and 3 of the test for damages.

Although the landlord gave verbal testimony with respect to the alleged damage and losses, this testimony was disputed by the tenant.

Given that it is the landlord who bears the burden of proof and the fact that all four elements of the test for damages have not been met, I find that the landlord's claim for damages must be dismissed.

I hereby dismiss the landlord's application without leave.

As the landlord has not refunded the tenant's security deposit, I hereby grant the tenant a monetary order in the amount of \$800.00. This order must be served on the landlord and may be enforced through an order from BC Small Claims Court, if unpaid.

Conclusion

The landlord is not successful in the application and the claim for damages is dismissed.

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: June 09, 2014

Residential Tenancy Branch

