



Dispute Resolution Services

Residential Tenancy Branch Office of Housing and
Construction Standards

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Decision

Dispute Codes:

MND 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 to retain the tenant's security deposit in payment for damages.

The applicant was present and participated in the hearing. Despite being served with the Notice of Hearing documents by registered mail sent on April 2, 2014, none of the respondents appeared and the hearing was therefore conducted in the respondent's absence.

Preliminary Matter:

In this application, the landlord applied for monetary compensation for damages. However, the landlord has also requested an order to retain the tenant's security deposit in partial satisfaction of the claim.

On the issue of whether or not I have jurisdiction to make a determination with respect to the status of this security deposit, I found it necessary to consider a previous dispute resolution decision issued on January 27, 2014. These same parties were involved in a hearing held on the tenant's application on January 21, 2014 in which the tenant was seeking an order for the return of their security deposit.

The matter of the security deposit was determined by the arbitrator at that time and the tenant was successful in being granted a monetary order for a refund of double the security deposit.

Section 77 of the *Act* states that, except as otherwise provided in the *Act*, a decision is final and binding on the parties. Therefore any findings or orders made by the arbitrator that presided over the prior hearing would not fall within my authority to hear or alter.

In light of the above, I find that the portion of the landlord's application relating to the request for an order to retain the tenant's security deposit had already been dealt with in the previous hearing and I therefore lack jurisdictional authority to deal with this particular matter a second time. I find that, to consider this matter again would violate the principal of *res judicata*. This is a rule in law establishing that a final decision, determined by an Officer with proper jurisdiction and made on the merits of the claim constitutes an absolute bar to any subsequent application involving the same claim or issues.

I find that, under the legislation I am bound by previous findings and any decision that I render cannot contradict the decision dated January 27, 2014.

That being said, despite the fact that the issue of the security deposit cannot be dealt with again in these proceedings today, the landlord's other claims for damages or loss, under section 67 of the Act, have not yet been the subject of a prior hearing. As such, the portion of the landlord's application seeking monetary compensation for damages can validly be determined during the proceedings today.

Issue(s) to be Decided

Is the landlord entitled to monetary compensation under section 67 of the *Act* for damages?

Background and Evidence

The landlord testified that tenancy began on January 1, 2013 for rent of \$1,700.00. The landlord testified that the tenants vacated on August 31, 2013.

The landlord testified that move-in and move-out condition inspection reports were completed by the landlord along with an agent of the tenant. Copies of the move-in and move-out condition inspection reports were submitted into evidence.

The move-in condition inspection report was signed but the section left for the tenant to indicate whether or not they agreed with the move-in report was not completed as the spot for the tenant's name was left blank.

The landlord testified that the tenant's agent did not agree with the landlord's charges for damages to the suite. The move-out condition inspection report was not signed by either the landlord or the tenant in the space provided. However, in a note at the bottom of the form, the tenant's agent indicated that they agent:

"WAS PRESENT DURING THE POST INSPECTION THE DEFICIENCIES WERE EXPLAINED TO ME DURING THE INSPECTION I DISAGREE TO PAY FOR ANY DAMAGES"

(Reproduced as written)

The landlord testified that the tenants left the rental unit unclean and damaged when they moved out. The landlord pointed out that the move-out condition inspection report verifies this fact. In addition to the move-in and move-out condition inspection reports, the landlord submitted photographs that the landlord testified were taken at the end of the tenancy on August 31, 2013 showing buckled flooring, a dirty oven, scratched stovetop, soiled deck surface, unclean toilet, a gouged wall, a broken door handle and a broken faucet.

The landlord also submitted an estimate of the cost for flooring replacement, carpentry, painting, plumbing and final clean. Also attached to this was a document apparently for

insurance purposes for “*Damages Due To Water Damage*” that lists the individual tasks in replacing the laminate flooring in each room.

The landlord testified that the following costs for the cleaning and damage are being claimed:

- \$2,000.00 for “Water damage to the floor” caused by the tenants,
- \$300.00 to repair a hole in the wall,
- \$150.00 to replace a kitchen faucet damaged by the tenants, and
- \$400.00 for cleaning representing 4 hours of cleaning by a two-person team.

No receipts for payment of any of the above cleaning or repair costs were submitted.

The total claim for compensation is \$2,850.00.

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.

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.

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.

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.

I find that the parties did conduct both a move-in and move out condition inspection. However, the form was not completed in spots and neither party signed in the designated space reserved for the signatures for the move out condition inspection report, although the tenant's agent did leave a comment that they disagreed with the landlord's claims for payment.

I accept that portions of the rental unit were not left clean, in particular the stove and oven and the deck. However, the standard imposed by the Act is that the unit be left in a *reasonably* clean condition. I find that the unit was not all dirty with most areas being left in a fairly clean condition. It is not a requirement under the Act that a tenant leave the unit spotless and "move-in ready" for the next occupant.

Element 2 of the test for damages requires that the claimant prove that the other party violated the Act and I find that there was no significant violation of section 37 of the Act because the unit was left reasonably clean.

In any case, I find that the landlord's claim for cleaning fails to satisfy element 3 of the test for damages because no receipt was submitted showing the landlord's specific costs for the cleaning. Therefore, I dismiss the \$400.00 claim for cleaning costs.

In regard to repairs, based on the photos, inspection report and testimony of the landlord, I accept that the unit was damaged as claimed by the landlord. To meet element 2 of the test for damages, the landlord must prove that the damage was caused by the tenants in violation of the Act.

Section 32 of the Act states that, while a tenant of a rental unit must repair damage to the rental unit caused by the actions or neglect of the tenant, a tenant is not required to make repairs for reasonable wear and tear.

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. Items and finishes have a limited useful life and this is recognized in Residential Tenancy Policy Guideline number 40 which lists the estimated useful life of interior and exterior finishes, items and fixtures.

Moreover, section 1 of the Residential Tenancy Policy Guidelines, "Landlord & Tenant – Responsibility for Residential Premises" states that a Landlord is responsible for ensuring that rental units and property, meet "health, safety and housing standards" established by law, and are reasonably suitable for occupation given the nature and location of the property. Infrastructure matters, such as appliances, fixtures, water and drainage for the plumbing,

including leaks, and locks and door hardware are the landlord's responsibility to maintain and repair. I find that some of the landlord's claims for compensation fall under the above category.

I find that the damaged faucet and door handle are not the tenant's responsibility to repair under the Act. In regard to the flooring claim, I find it is unclear how the water damage to the floors occurred and what role the tenants played in this situation. Further, I find it is not clear how much of the damage to the floors, if any, was covered by the landlord's insurance policy.

In any case, irrespective of the above considerations, I find that the landlord has not successfully satisfied element 3 of the test for damages because no proof was submitted in the form of paid invoices or receipts showing that the landlord suffered the monetary loss in the amount being claimed.

For the reasons above, I find that the landlord has not sufficiently met the requisite burden of proof to justify a monetary order for compensation.

Based on the testimony and evidence presented during these proceedings, I find that the landlord is not entitled to the monetary compensation and the landlord's application is dismissed without leave.

Conclusion

The landlord is not successful in the application seeking compensation and the application is dismissed in its entirety without leave to reapply.

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: July 21, 2014

Residential Tenancy Branch

