



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

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 damage to the unit and a request to retain the security deposit in partial satisfaction of the claim.

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.

Preliminary Matter

The landlord testified that there were no written tenancy agreements, but the unit was rented to 3 occupants. The landlord testified that the rents he collected for the unit were \$550.00 paid by 2 occupants and \$450.00 per month charged to the respondent tenant, plus hydro.

According to the tenant, he paid his \$450.00 rent separately to the landlord and the other 2 occupants who had their own tenancies, vacated the rental unit, ending their tenancies prior to him. The parties testified that the respondent tenant remained in the unit until April 18, 2014.

The respondent tenant paid a security deposit in the amount of \$225.00. Although the landlord has included a claim against the security deposit of the other two tenants, I find that the tenancy with the respondent tenant is separate from the agreement made between the landlord and the other two tenants. I find that the three tenants were not co-tenants, but were “tenants in common”, occupying the same rental unit, and sharing the common areas, but each having their own separate tenancy agreements with the landlord.

Therefore, this hearing will only deal with the tenancy agreement that is specifically applicable between the landlord and the respondent tenant.

Issue(s) to be Decided

Is the landlord entitled to monetary compensation for damages?

Background and Evidence

The tenancy began in January 2014 with rent of \$450.00 and a security deposit of \$225.00 was paid. The tenant occupied a suite that included sharing common areas with 2 other tenants in common. The tenancy ended on April 18, 2014. The landlord testified that the unit was in pristine condition when the tenant moved in.

The landlord testified that, when the tenancy ended, the tenant left the unit in need of cleaning, garbage removal and repairs. The landlord is claiming the following:

- \$33.30 for 2 broken patio chairs
- \$150.00 for the cost of removing abandoned furniture
- \$198.69 to replace a broken office chair
- \$50.00 for burns on the coffee table
- \$66.60 replacement cost of a broken ottoman
- \$80.00 to clean the refrigerator representing 4 hours of labour at \$20.00 per hour
- \$40.00 for two hours of vacuuming.

The landlord is also seeking reimbursement of the \$50.00 cost of the application and \$11.00 for postage.

In support of the above claims, the landlord submitted photographs into evidence showing the various areas of concern. No copies of a move-in or move-out condition inspection report, nor receipts for the claimed expenditures, were submitted into evidence. No copy of a written tenancy agreement was in evidence listing what furnishings were included in the tenancy.

The tenant disputed all of the landlord's claims. The tenant testified that some of the furniture in the suite was already damaged and compromised by normal wear and tear when he moved in. The tenant testified that the abandoned items left in the unit did not belong to him. The tenant stated that he had no way of knowing what furnishings had been included in the suite. In regard to the damaged ottoman, the tenant pointed out that, during the tenancy, the landlord was notified that it was damaged, but did not address the problem. In regard to the allegation that the unit was not left reasonably clean, the tenant argued that the unit was thoroughly cleaned, including vacuuming the floors.

The tenant's position is that the security deposit of \$225.00 should be refunded.

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.

In a claim for damage or loss under the Act, the party making the monetary 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.
4. Proof that reasonable steps were taken to mitigate or minimize the loss or damage in compliance with section 7(2) of the Act.

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 it reasonably clean and undamaged except for reasonable wear and tear.

In this instance, the landlord alleges that the tenant left the unit damaged and unclean and the landlord incurred costs of \$618.59 plus postage and fees for the application.

I find that the tenant's role in causing damages can normally be established by comparing the condition before the tenancy began with the condition after the tenancy ended. In other words, through submission of completed copies of move-in and move-out condition inspection reports, featuring both party's signatures. I find that conflicting verbal testimony on the subject will not suffice to support a claim for damages.

Sections 23(3) and 35 of the Act, for move-in and move-out inspection reports, 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. 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 a move-out condition inspection report had ever been completed. I find the failure to comply with the applicable sections of the Act has hindered the landlord's claim for compensation preventing this monetary claim from satisfying element 2 of the test for damages.

In addition to the above, I find that the fact this suite was shared with other tenants-in-common under separate tenancies, makes it impossible to establish that this tenant is solely responsible for all of the claimed costs for cleaning and repairs.

Finally, with respect to satisfying element 3 of the test for damages, I find that the landlord also failed to submit receipts or invoices to prove the monetary loss.

Given that the landlord has not succeeded in meeting all four elements of the test for damages, I find that the landlord's claim for damages must be dismissed and the security deposit must be refunded to the tenant forthwith.

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

I hereby grant a monetary order to the tenant pursuant to section 38 on the Act, in the amount of \$225.00. This order must be served on the applicant landlord and may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

Conclusion

The landlord's application for damages is dismissed and a monetary order is granted to the tenant in compensation for the refund of the security deposit.

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: August 25, 2014

Residential Tenancy Branch

