



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNR, MNSD, MND, FF

Introduction

This Dispute Resolution hearing was set to deal with an Application by the landlord for a monetary order for rent owed, loss of rent for the following month, the costs of cleaning the carpets and the yard and removal of the tenant's furnishings.

The landlord was present. Despite each being served by registered mail sent on April 14, 2014, as confirmed by Canada Post tracking numbers, the tenant did not appear and the hearing was held in the absence of the tenant.

Issue(s) to be Decided

Is the landlord entitled to monetary compensation under section 67 of the *Act* for rental arrears, loss of rent and cleaning?

Background

The landlord testified that the tenancy began on October 1, 2011 as a one-year fixed term to expire on September 30, 2012. The rent was \$1,200.00 per month and a security deposit of \$600.00 is being held in trust.

The landlord testified that the tenant suddenly vacated without notice sometime in August 2012, leaving unpaid rental arrears in the amount of \$2,010.00, including accrued arrears and rent for August 2012. The landlord pointed out that, although they advertised for a replacement renter as soon as possible, they failed to find a tenant for September 2012, lost \$1,200.00 revenue for the month of September 2012, during which the unit was vacant. The landlord is claiming \$3,210.00 compensation for rent plus the loss of revenue.

A copy of the tenancy agreement, photos, copies of invoices and proof of service were submitted into evidence by the landlord. No move-in or move-out condition inspection reports had been completed by the landlord and tenant.

The landlord testified that when the tenant vacated the rental unit, they failed to shampoo the carpets and left furnishings in the unit. The landlord is claiming \$190.00 for the carpet cleaning and \$396.48 for the furniture removal costs. These expenditures were supported by receipts.

The landlord testified that the tenant also failed to maintain the yard and the landlord is claiming compensation of \$280.00. The landlord submitted a receipt for \$200.00 for services rendered on August 27, 2012 and a second receipt for \$80.00 for further yard maintenance dated September 24, 2012.

Analysis:

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 the Act, the regulations or the tenancy agreement.

I find that the tenant did not pay all of the accrued rental arrears of \$2,010.00 up to and including the month of August 2012, when the tenant suddenly terminated the tenancy before the expiry of the fixed term.

I find that the tenant breached the Act and agreement by failing to pay the rent owed and the landlord is therefore entitled to the claimed compensation of \$2,010.00.

In regard to the other claims for damages and loss, including \$1,200.00 for loss of revenue for September 2012, costs for cleaning, yard maintenance and removal of items abandoned by the tenant, I find that, these damage claims are dealt with under section 7 of the Act.

This part 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 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.

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, the burden of proof is on the landlord, to prove the existence of the damage/loss and that it stemmed directly from a violation of the agreement or the Act on the part of the respondent.

In regard to the claim for \$1,200.00 loss of rent for the month of September 2012, I find that the tenant breached the tenancy agreement by ending the tenancy prior to the expiry of the fixed term. I find that the landlord suffered a genuine loss and the landlord made reasonable attempts to minimize the loss by immediately trying to re-rent the unit. Therefore, I find that this claim satisfies all elements of the test for damages and loss, and the landlord is entitled to be compensated \$1,200.00 for September.

In regard to the carpet cleaning and removal costs, I find that under section 37(2) of the Act the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear when a tenant vacates a rental unit.

I find that the tenant failed to comply with this section of the Act and the landlord is therefore entitled to \$190.00 for carpet cleaning and \$396.48 for removal costs of the items abandoned by the tenant.

With respect to compensation for yard maintenance, I find that there is no specific term in the tenancy agreement signed by these two parties that requires the tenant to do any specific yard duties. However, section 32 of the Act states that a tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access.

Part 1 of the Residential Tenancy Policy Guidelines , under the heading, “*Property Maintenance*” states in paragraph 3 that:

“Generally the tenant who lives in a single-family dwelling is responsible for routine yard maintenance, which includes cutting grass and clearing snow. The tenant is responsible for a reasonable amount of weeding the flower beds if the tenancy agreement requires a tenant to maintain the flower beds.” (My emphasis)

I find that the written tenancy agreement signed by these parties makes no mention of a specific agreement that the tenant would maintain the flower beds.

I find that the invoice for yard work dated August 22, 2012 at a cost of \$200.00 includes charges for,

“Yard cleanup mow lawns, weedeater, weed flowerbeds, raked up lawns.”
(Reproduced as written)

Given the above, I find that the tenant is not responsible to reimburse the landlord for the portion of the yard work bill relating to weeding the garden because neither the Act

nor the tenancy agreement imposes this specific responsibility on the tenant. Therefore I find that the landlord is only entitled to the portion of costs for clean-up and mowing and set this amount at \$100.00 towards the yard work outlined in the invoice dated August 22, 2012.

In regard to the second invoice for yard work completed in September 2012, after the tenancy was terminated by the tenant, I find that the landlord had possession of the rental unit as of September 1, 2012 or earlier. Therefore the cost of maintaining the yard after August 2012 would no longer be the tenant's responsibility.

Based on the evidence, I find that the landlord is entitled to total compensation of \$3,946.48, comprised of \$2,010.00 for rental arrears, \$1,200.00 loss of rent for September 2012, \$190.00 for carpet cleaning, \$396.48 for removal costs, \$100.00 for a portion of the yard work costs for August 2012 and the \$50.00 cost of the application.

I hereby order that the landlord retain the tenant's \$600.00 security deposit in partial satisfaction of the claim. I hereby issue a monetary order for the remainder of \$3,346.48.

This order must be served on the tenant in accordance with the Act and if necessary can be enforced through Small Claims Court.

Conclusion

The landlord is partly successful in the application and is granted a monetary order for rental arrears and cleaning.

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 12, 2014

Residential Tenancy Branch

