



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNSD, O, FF

Introduction

The hearing was convened to deal with an application by the landlord for a monetary order for damages and to retain the tenant's security deposit in partial satisfaction of the claim. The application was also convened to hear a cross application by tenant for the return of the tenant's security deposit.

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. I have considered all of the affirmed testimony and relevant evidence that was properly served on the other party and submitted to the file at the Residential Tenancy Branch at least 5 days in advance of the hearing pursuant to the Act. The parties were also permitted to present affirmed oral testimony and to make submissions during the hearing.

Issues to be Decided for the Tenant's Application

- Is the tenant entitled to a refund of the security deposit paid?

Issues to be Decided for the Landlord's Application.

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

Background and Evidence

The tenancy began in September 2013 and ended April 1, 2014. The tenant paid a security deposit of \$800.00 which is still being held by the landlord. The landlord testified that the tenant signed a tenancy agreement for a one-year lease but on February 19, 2014 gave Notice to terminate the tenancy effective April 1, 2014. No copy of the lease was submitted into evidence.

The landlord testified that they incurred a cost to re-lease the unit in the amount of \$817.60, carpet cleaning costs of \$78.75 and general cleaning costs of \$75.00. No

copies of move-in and move-out condition inspection reports were placed in evidence by the landlord.

The landlord seeks to keep the \$800.00 security deposit and be granted a Monetary Order for the remainder of the monetary claim.

The tenant testified that, after they gave their Notice to move effective April 1, 2014, the landlord and tenant subsequently reached an agreement that the tenant would stay and pay rent until April 30, 2014. The tenant pointed out that the parties then signed a Mutual Agreement To End The Tenancy, effective April 30, 2014. The tenant had submitted a signed copy of the Mutual Agreement into evidence. The tenant's position is that the landlord is not entitled to claim leasing charges for re-renting the unit when the parties signed a mutual agreement ending the tenancy by consent.

In regard to the cleaning costs, the tenant testified that they left the unit in a reasonably clean condition as required under the Act and they returned the unit in the same condition as when they first took occupancy. The tenant pointed out that photographs of the unit submitted by the landlord showed debris that did not belong to the tenants.

Analysis

With respect to a monetary claim for damages, I find it is necessary that evidence furnished by each applicant/claimant 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.

With respect to the landlord's costs of re-renting the unit, I find that the fixed term tenancy contract was terminated and replaced by a valid Mutual Agreement to End Tenancy signed by both parties.

I find that the landlord's claim for the cost of the leasing does not meet element 2 of the test for damages because there was no violation of the Act or agreement by the tenant in ending the tenancy effective April 30, 2014.

For this reason, I find that the portion of the landlord's claim seeking \$817.60 in compensation for leasing costs is not supported and must therefore be dismissed.

In regard to the landlord's claims for cleaning, 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.

To determine whether or not the tenant had complied with this requirement, I find that this can best be established by comparing the unit's condition as it was when the tenancy began with the final condition of the unit after the tenancy ends. In other words, through the submission of move-in and move-out condition inspection reports containing both party's signatures.

In this instance, condition inspection reports were not in evidence. In addition, I find that the landlord did not furnish sufficient proof of the claimed expenditures and therefore fails to satisfy element 3 of the test for damages.

The tenant is disputing the claims by stating that the rental unit was left in the same condition as when they moved in. I find that the evidence submitted by the landlord was not adequate to prove otherwise.

Based on the evidence before me, I find that the landlord has not successfully met the burden of proof to justify the monetary claims for carpet cleaning and general cleaning.

Given the above, I find that the landlord's monetary claims must therefore be dismissed. Accordingly, I order that the landlord's application is dismissed in its entirety without leave to reapply.

I find that the total compensation owed to the tenant is \$850.00 comprised of \$800.00 for the refund of their security deposit and the 50.00 cost of the application. Under the Act, I find that the tenant is not entitled to be reimbursed for other costs such as mailing.

I hereby grant the tenant a monetary order in the amount of \$850.00. This order must be served on the landlord and may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

Conclusion

The tenant is successful in the cross application and is granted a refund of the security deposit. The landlord is not successful in the application and the landlord's monetary claims for cleaning and leasing costs are dismissed without leave.

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: September 10, 2014

Residential Tenancy Branch

