



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

Decision

Dispute Codes:

MNSD, MND, FF

Introduction

This Dispute Resolution hearing was set to deal with an Application by the landlord to retain the tenant's security deposit and a monetary order for cleaning, repairs and disposal costs.

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 all of the relevant evidence that was properly served.

Issue(s) to be Decided

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

Background and Evidence

The landlord testified that the tenancy began on April 1, 2012 and ended on April 30, 2014. A security deposit of \$600.00 was paid and the current rent was \$1,200.00.

The landlord submitted into evidence copies of photos, a list of expenditures, copies of receipts, a copy of a Two Month Notice to End Tenancy for Landlord's Use, copies of communications and proof of service.

No copy of the tenancy agreement or move-in and move-out condition inspection reports were submitted.

The landlord testified that the tenants left the rental unit in need of cleaning and repairs and listed the following claims:

- \$551.25 for invoice from Coast Home Services
- \$172.25 for dump fees
- \$225.00 for carpet removal costs
- \$100 to dispose of refrigerator
- \$100.00 to dispose of stove
- \$200.00 for 8 hours of “mold cleaning”
- \$202.51 total materials

The landlord stated that there was mold attributable to the tenant's lifestyle and the landlord incurred costs to have it inspected and cleaned up. The landlord testified that the tenants had chickens and failed to clean up the mess left by them and also left items that had to be disposed of. The landlord testified that the tenants damaged the floors and carpets which had to be replaced.

The tenant's acknowledged accidentally leaving some dishes and food, but disputed the remainder of the landlord's claims. The tenant stated that they left the unit in the same condition as when they moved in. The tenants stated that they did not use the attached shed and all items left there and elsewhere on the property pre-existed their tenancy. The tenant pointed out that the carpets and appliances were older and subject to normal wear and tear.

In regard to the mold problems, the tenants stated that they did nothing to create or contribute to mold forming on the walls of several rooms.

No copy of a move-in condition inspection report or Move-out inspection report was submitted into evidence.

Analysis

With respect to the disputed claims for compensation, 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.

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

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

I find that the tenant's role in causing damage can normally be established by comparing the condition before the tenancy began with the condition of the unit after the tenancy ended through the submission of completed copies of the move-in and move-out condition inspection reports, featuring both party's signatures.

In this instance, I find that the landlord did not submit move-in and move out condition inspection report to verify the condition of the rental unit at the beginning and end of the tenancy, but is relying on photos of various areas of the unit and property.

I find that the landlord's photographic evidence verified that the unit was plagued with mold. However, I find that this evidence does not prove that the tenants were solely responsible for the growth of mold. Generally, it is a landlord's responsibility to arrange investigation of any mold issues. The burden of proof is on the landlord to prove that the tenant was the cause of the problem and I find that he landlord has not met that burden.

I find that the landlord's photos verify that a few specific areas within the rental unit, such as the area behind the washer and dryer, the oven, the overhead fan and the inside of some cabinets were found not to be completely clean and I accept the landlord's testimony that some cleaning was genuinely required.

However, without properly completed move-in and move-out condition inspection reports there is no way to confirm the state of the remainder of the unit not shown in the photos or the condition of the unit when the tenants took occupancy.

Moreover, the landlord submitted a receipt for cleaning that specifically mentions that the cleaning was for mold contamination as part of the invoice for 8 hours of labour.

In regard to the removal of the appliances and other items on the site, I find that the repair, maintenance and replacement of appliances are the responsibility of the landlord under the Act. I also accept the tenant's testimony that there were already items left on the site when they moved into the unit. I find that there is no way to know what disposal costs related only to the tenants possessions.

Therefore, based on the evidence before me, I find that the landlord is only entitled to general cleaning costs in the amount of \$100.00.

In regard to the carpet replacement, I find that the average useful life for carpets, according to section 40 of the Residential Tenancy Guidelines is set at 10 years. I find that, on a balance of probabilities, the carpets in question had likely exceeded their useful life and were due for removal and placement.

In regard to the landlord's monetary claim for cost of materials, I find that the landlord has failed to provide sufficient detailed information to verify what the materials were and where they were used, nor that the tenant is responsible for the need for the purchase of these items.

Based on the testimony and evidence I find that the landlord is entitled to total monetary compensation in the amount of \$100.00 comprised for cleaning. As the landlord has been largely unsuccessful in the claim, I do not grant compensation for the \$50.00 cost of the application. The remainder of the landlord's application is dismissed without leave.

I order that the landlord retain the amount of \$100.00 from the tenant's \$600.00 security deposit, leaving a remainder of \$500.00 still held in favour of the tenant, which must be refunded to the tenant forthwith.

I hereby grant a monetary order in the amount of \$500.00 to the tenant. This order must be served on the tenant and may be enforced in small claims court if necessary.

Conclusion

The landlord is partially successful in the monetary claim and ordered to retain a portion of the tenant's security deposit and a monetary order to the tenant for the remainder of the 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: September 22, 2014

Residential Tenancy Branch

