



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MND, MNR, MNSD, MNDC, FF

Introduction

This Dispute Resolution hearing was set to deal with an Application by the landlord for a monetary order for cleaning, repairs, garbage removal, storage and unpaid rent.

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 make submissions during the hearing. I have considered all of the evidence properly served and the verbal testimony given by the parties during the hearing.

Issue(s) to be Decided

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

Background and Evidence

The landlord testified that the tenancy began on February 1, 2014 and the rent was \$1,075.00. A portion of the security deposit was paid. The landlord testified that the tenant only paid \$200.00 towards the deposit but the tenant testified that he had actually paid \$350.00 towards the deposit. No evidence was submitted by either party to verify the amounts being claimed as paid.

The tenancy ended on July 1, 2014. The landlord testified that the tenant did not pay \$1,075.00 rent owed for the month of June 2014 and stated that the tenant gave short notice to move out.

The landlord testified that the tenant left the unit in an un-rentable state when the tenant vacated. According to the landlord, she was required to remove 14 bags of garbage and store the tenant's abandoned furniture. The landlord stated that they are seeking compensation for the costs of cleaning and repairs.

The landlord did not provide a detailed breakdown of the costs. No copies of a move in inspection report nor a move out inspection report were submitted. No copies of receipts, estimates or invoices were in evidence to support the claimed costs. However, the landlord is claiming total compensation of \$3,750.00, including the \$1,075.00 for rental arrears.

The tenant acknowledged that they had left items in the unit and also agreed that their final month's rent of \$1,075.00 was not paid. However, the tenant disputed the amount put forth as the landlord's claimed costs for cleaning and repairs. The tenant testified that the unit was not clean nor undamaged when they first moved in. The tenant's position is that they should not be charged more than \$150.00 for the clean-up costs and \$1,075.00 for the rental arrears owed.

Analysis

In regard to the landlord's monetary claim for damages, I find that section 7(a) of the Act permits one party to claim compensation from the other for costs that result from a violating the Act, the regulations or the tenancy agreement. 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 claiming compensation bears the burden of proof. I find that in order to justify the monetary claim, the Applicant would first be required to prove that the other party did not comply with the Act and then prove that this non-compliance directly resulted in verified costs or losses to the Applicant. 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.

With respect to the claim for the cost of cleaning and repairs, 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 section 37 of the Act, I find that this can best be established by comparing the condition when the tenancy began with the final condition of the unit after the tenancy ended, using properly completed move-in and move-out condition inspection report forms containing both party's signatures.

Conducting move-in and move out condition inspections and documenting the findings on reports is a requirement of the Act under section 23(3) and section 35 of the Act and places the obligation on the landlord to complete the condition inspection report in accordance with the regulations. Both the landlord and tenant must sign the condition inspection report after which the landlord must give the tenant a copy of that report in accordance with the regulations.

The Act allows a landlord to conduct the move-out condition inspection report in the tenant's absence if the landlord has properly served the tenant with notification on the accepted form trying to schedule the inspection and giving the tenant two opportunities to negotiate a time.

Although this landlord failed to submit a detailed accounting of the expenditures into evidence to verify the costs incurred and also neglected to submit any copies of the move-in and move-out inspection reports, I accept that the photos show the unit was not left in a reasonably clean condition as required under the Act. For this reason, I find that the landlord is entitled to retain the tenant's entire security deposit currently held in trust, in full satisfaction of the cleaning and garbage removal claim.

With respect to the landlord's claim for rental arrears, I find that 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. In this instance, I find that the tenant violated the Act by not paying the rent when it was due.

Accordingly, I find that the landlord is validly entitled to be compensated for rental arrears in the amount of \$1,075.00 plus the \$50.00 cost of the application, for a total monetary order of \$1,125.00.

Based on the testimony and evidence presented during these proceedings, I hereby grant the landlord a monetary order under section 67 of the Act for \$1,125.00 and I also order that the landlord retain the tenant's security deposit in full. This order must be served on the Respondent and may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

Conclusion

The landlord is partly successful in the application and is granted a monetary order and the right to retain the tenant's 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: November 06, 2014

Residential Tenancy Branch

