



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, FF

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- a monetary order for damage to the rental unit pursuant to section 67; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The tenants and the landlord attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The tenants confirmed receipt of the landlord's application for dispute resolution package and confirmed that they did not provide any documentary evidence for this hearing. In accordance with section 89 of the *Act*, I find that the tenants were duly served with the application.

Preliminary Issue – Service of Landlord's Evidence

The Residential Tenancy Branch ("RTB") Rules of Procedure 3.14 establishes that evidence intended to be relied on at the hearing must be received by the respondent and the Branch not less than 14 days before the hearing.

The RTB received a 39 page evidence package from the landlord on December 8, 2016, 11 days prior to the hearing. The landlord could not provide details as to when or how he served this evidence to the tenants. The landlord testified that he served a 25 page documentary evidence package with his original application to the tenants but could not identify what was in this evidence package. The tenants confirmed that they received documentary evidence consisting of 9 pages of photographs and 4 pages of a restoration estimate with the original application.

A party to a dispute resolution hearing is entitled to know the case against him/her and must have a proper opportunity to respond to that case. Since it is unknown whether the landlord served the 39 page evidence package to the tenants, there would be a denial of the fundamental right to natural justice if I were to consider evidence that was not provided to one of the parties. It would prejudice the tenants to admit evidence that they have not had the opportunity to review.

Based on the testimony of the parties and in accordance with section 88 of the *Act*, I am satisfied the tenants received 13 pages of documentary evidence with the landlords application and therefore had sufficient time to review this evidence. For the reasons stated above, I have not relied on the landlord's entire 39 page evidence package but rather only the 13 pages the tenants have confirmed receipt of.

Preliminary Issue – Tenants Request to Dismiss on the basis of Section 62(4) of the *Act*

At the outset of the hearing, the tenants' legal counsel requested the landlord's application be dismissed pursuant to section 62(4) of the *Act*. Legal counsel contended that the landlord's application was frivolous; a hearing had already been conducted on October 28, 2015 on the same matter. For ease of reference, the file number for that hearing is set out on the front page of this decision.

Upon review of the October 28, 2015 decision, it became apparent that the previous hearing did not address an application for a monetary order for damage to the rental unit. Therefore, the tenants were advised their request to dismiss the landlord's application was denied on this ground and this hearing would continue.

Preliminary Issue – Tenants Request to Dismiss on the basis of Section 58(2) of the *Act*

As the tenants were denied their request to dismiss the landlord's application on the basis of section 62(4), the tenants' legal counsel requested the hearing be dismissed on the basis that the matter is already before the courts. Legal counsel explained that the tenants filed notice in Small Claims Court and in response the landlord filed a counter claim of \$14,000.00 on June 9, 2016.

Section 58(2) of the *Act* states that the Director of the RTB must hear a dispute unless the dispute is linked substantially to a matter that is before the Supreme Court. I am satisfied on the balance of probabilities that the issues brought before me by the landlord in this application are substantially linked to proceedings before the Small Claims Court; not the Supreme Court. For this reason, I deny the tenants request to dismiss the landlord's application.

Issue(s) to be Decided

Is the landlord entitled to a monetary order for damage to the rental unit?

Is the landlord authorized to recover the filing fee for this application from the tenants?

Background and Evidence

As per the testimony of the parties, the tenancy began on April 8, 2009 on a fixed term until April 20, 2010, at which time the tenancy continued on a month-to-month basis. Rent in the amount of \$750.00 was payable on the first of each month. The tenants remitted a security deposit in

the amount of \$375.00 at the start of the tenancy. The tenants vacated the rental unit March 3, 2016.

The parties agreed that a condition inspection report was not done at move-in or move-out.

The landlord seeks a monetary order of \$18,320.44. The landlord testified that the tenants destroyed the rental unit with extensive damage including but not limited to holes in the wall, broken doors, ruined carpets, abandoned junk and furniture. The landlord provided photographs of the rental unit before and after the tenancy.

During the hearing, the landlord did not provide a monetary breakdown for the \$18,320.44 in damages sought in his application. The landlord did however provide an estimate from a restoration company that detailed the work required. This estimate amount is what the landlord seeks in damages. The landlord testified that he did not hire the restoration company that provided the estimate to conduct the repairs; rather he and other individual contractors conducted the repair work. The landlord did not indicate what specific repairs he or the other contractors made or what actual costs he incurred.

The tenants contend that the rental unit was damaged prior to their tenancy and in regards to leaving items behind; they testified this was done due to the presence of bedbugs. The tenants testified that because the photographs are not dated, they are insufficient to prove the tenants are responsible for the damage. The tenants' alleged squatters could have caused this damage or alternatively the photographs could have been staged.

Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party.

In this case, the onus is on the landlord to prove, on a balance of probabilities, the following four elements:

1. Proof that the damage or loss exists;
2. Proof that the damage or loss occurred due to the actions or neglect of the landlord in violation of the *Act*, *Regulation* or tenancy agreement;
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
4. Proof that the landlord followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

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

Upon review of the photographs and the landlord's testimony I am satisfied based on the balance of probabilities that the tenants left the rental unit contrary to section 37(2) of the *Act*. However because the landlord has not established what repairs have been made and what actual costs have been incurred, I cannot award him the monetary amount set out in his application. Rather, I award the landlord \$1,280.00 in compensation based on four 8 hour days of cleaning and repair for two people at \$20.00 per hour.

As the landlord was successful in this application, I find that the landlord is entitled to recover the \$100.00 filing fee paid for the application for a total award of \$1,380.00.

Conclusion

I issue a monetary order in the landlord's favour in the amount of \$1,380.00 against the tenant.

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: January 20, 2017

Residential Tenancy Branch