



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards
Ministry of Housing and Social Development

Decision

Dispute Codes: MND MNDC MNR FF

Introduction

This Dispute Resolution hearing was convened to deal with an Application by the landlord for a monetary order for rent , money owed or compensation for damage or loss under the Residential Tenancy Act, (the Act). The landlord and two of the three tenants appeared and each gave affirmed testimony in turn.

Issue(s) to be Decided for the Landlord's Application

The landlord was seeking an additional amount for damage to the unit and for money owed or compensation for damage and loss under the Act for a total claim of \$5,965.00

The issues to be determined based on the testimony and the evidence are:

- Whether the landlord is entitled to monetary compensation under section 67 of the *Act* for damages or loss. This determination is dependant upon answers to the following questions:
 - Has the landlord submitted proof that the specific amounts being claimed are validly owed by the tenant to this landlord and are supported pursuant to *section 7* and *section 67* of the Act by establishing on a balance of probabilities:
 - a) that the damage was caused by the tenant in violation of the Act

- b) a verification of the actual costs to repair the damage
- c) that the landlord fulfilled the obligation to do what ever is reasonable to mitigate the costs

The burden of proof regarding the above is on the landlord/claimant.

Background and Evidence

The tenancy began in April 2008 with reduced rent set at \$3,400.00 per month, at which time a security deposit of \$1,700.00 and pet damage deposit of \$500.00 was paid. The landlord testified that the tenant's cheque for rent for the month of October 2008 was returned NSF. The landlord testified that the tenant still owed \$850.00 and was subsequently served with a Ten-Day Notice to End Tenancy for Unpaid Rent dated October 21, 2008 with an effective date of October 31, 2008. This document was not in evidence. The landlord testified that pursuant to the notice, the tenants moved out of the rental unit on October 31, 2008 and that it was left unclean, with furniture remaining including a mattress and also that there was significant damage to the paint requiring repainting of the unit. The landlord testified that a move-out inspection was conducted and that the tenant had included a written comment that the tenant did not agree with the landlord's assessment. This document was not submitted into evidence. The landlord testified that attempts were made to minimize the loss by advertising and showing the rental unit to perspective renters but that the landlord was unable to re-rent the unit, despite lowering the rental rate. The landlord testified that a loss of \$3,400.00 was incurred for the month of November 2008, compensation for which the landlord was claiming. The landlord did not submit copies of the advertisements that had apparently been placed on "Craigslist" into evidence. The landlord testified that a specialty company was hired to clean, repair and repaint the unit the unit after the tenant left on October 31, 2008 and that the work was completed between October 31 and November 26, 2008 at a cost of \$1,997.00 for "*move out service, carpet cleaning, full cleaning, painting, disposal.*" I note that this invoice lacked sufficient detail to determine what the

actual breakdown of costs were for the different tasks. However, the landlord was able to give verbal testimony about the nature of the expenditures which are as follows:

- \$68.00 carpet cleaning of two rooms and \$15.00 for carpet cleaning of the stairs
- \$270.00 discounted cost for “full move-out cleaning” entailing 2 persons for 6 or 7 hours at a cost of \$65.00 per hour
- \$1,354.00 painting costs with materials and labour including:
\$520.00 to paint two rooms downstairs, basement and patching and painting the kitchen; \$465.00 to paint 3 rooms upstairs; \$65.00 to paint the window and door frames downstairs; \$199.00 to paint the main hall, kitchen wall, counter and laundry room touchups and; \$105.00 for the upstairs door frames.
- \$195.00 costs for disposal of items
- \$95.10 GST

Additional tasks were conducted by the landlord for which no claim was made including the sorting out of garbage thrown in the compost bin, and loading and transporting abandoned furniture to donate to charitable organizations

The total monetary claim of the landlord including the cleanup costs, rental arrears and rent loss of rent was \$5,882.00 plus the \$50.00 cost of the application which the landlord determined would be reduced by the tenant’s security and pet damage deposits of \$2,200.00 plus \$21.73 interest.

The tenant acknowledged that the tenants owed \$850.00 for the shortfall in the rent for the month of October 2008. However, the tenant disputed the landlord’s loss of rent claim for the month of November 2008. The tenant testified that they fully complied with the ten-day Notice to vacate issued by the landlord. The tenant felt that they should not

be held liable for the loss of November rent because the landlord had not properly mitigated the loss in that the landlord had delayed preparing the unit for rental. The tenant testified that, contrary to the claim made by the landlord that the rental rate was advertised at a lower rate, the landlord had in fact advertised the unit for \$3,600.00 per month. In regards to the landlord's claim for damages for the cleaning and painting, the tenant did not agree with the move-out inspection report and disputed ever having signed it. This report was not before me. The tenant stated that the tenant thoroughly cleaned the unit before vacating the unit and had actually left it in better state of cleanliness than it was when upon moving in. The tenant testified that when the tenancy began the walls were already in need of being repainted, the floors and appliances were not cleaned and garbage and furnishings were left in the unit as well as in the crawl space.

Analysis

In regards to an applicant's right to claim damages from another party, Section 7 of the Act states that if a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results. Section 67 of the Act grants a dispute Resolution Officer the authority to determine the amount and order payment in such circumstances.

I find that in order to justify payment of damages under section 67, the Applicant would be required to prove that the other party did not comply with the Act and that this non-compliance resulted in costs or losses to the Applicant, pursuant to section 7.

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.
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 the Act on the part of the tenant. The claimant must then provide evidence that will verify the actual monetary amount of the loss or damage. Finally it must be proven that the claimant did everything possible to mitigate the losses.

It is important to note that in a dispute such as this, the two parties and the testimony each puts forth, do not stand on equal ground. The reason that this is true is because one party must carry the added burden of proof. In other words, the applicant, in this case the landlord, has the onus of proving during these proceedings, that the damages and compensation being claimed are justified under the Act. When the evidence merely consists of conflicting verbal testimony then the party who bears the burden of proof is not likely to prevail. I find that the landlord has not met the burden of proof.

I have no hesitation in accepting the landlord's testimony that the residence was in need of cleaning and repair. However, this finding only satisfies the first element of the test for damages. Element 2 must also be proven by showing that the tenant was totally responsible for the damage in violation of the Act. I find that although the landlord has made a convincing and logical argument in support of this claim, the respondent has disputed the landlord's facts. Unfortunately in the absence of a move-in inspection report that would serve as independent evidence to verify the condition of the residence at the time the tenant moved in, all we are left with is refuted verbal testimony from the two parties in regards to the issue of responsibility for the state of the unit. Therefore I

find that the test for damages has not been met by the landlord in regards to the cleaning and painting.

In this instance, however, there was a verified loss of rent for the month of November and I find that the loss was due to the fact that the end of the tenancy was caused by the tenant failing to pay rent when it was due. This, in turn, resulted in the loss of rent due to the vacancy during the month of November 2008. I find that the landlord had relatively short period of ten days in the month of October during which to try and mitigate the loss. That being said, the efforts to rent may or may not have been thwarted during the month of November by the fact that the unit was not completely prepared for rental until closer to the end of the month. The unit was not rented for the month of December 2008 either. However, I find that I cannot hold the tenants totally responsible for the rental losses for the following reasons:

- The landlord was unable to disprove the tenant's claim that the tenant had left the unit in the same shape as it was when the tenant moved in
- The tenant had no control over when the landlord was able to schedule the cleanup of the unit which stretched well into the month of November, according to the invoice from the move-out service contractor.
- The landlord was not able to prove that the efforts to mitigate weren't hampered by advertising the unit at a higher rate than that charged to the tenants, as alleged by the respondent.

Based on the testimony and evidence presented during these proceedings, I find that the tenants are responsible to compensate the landlord in the amount of \$2,600.00 comprised of \$850.00 for rental arrears for the month of October 2008, \$1,700.00 rent loss for half the month of November and the \$50.00 fee paid by the landlord for this application. I order that the landlord retain the security and pet damage deposits of \$2,223.35 in partial satisfaction of the claim, leaving a debt of \$376.65 still owed to the landlord by the tenant.

Conclusion

I hereby issue a monetary order in favour of the landlord in the amount of \$376.65. This order must be served on the respondent and may be enforced through Small Claims Court if necessary.

Dated: December 2008