

DECISION

Dispute Codes MND MNSD FF
 MNSD FF

Introduction

This hearing dealt with cross applications for Dispute Resolution filed by both the Landlord and the Tenant.

The Landlord filed seeking a Monetary Order for damage to the unit, to keep the security deposit in partial satisfaction of their claim, and to recover the cost of the filing fee from the Tenant.

The Tenant filed seeking a Monetary Order for the return of double his security deposit and to recover the cost of the filing fee from the Landlord.

Service of the hearing documents by the Landlord to the Tenant was done in accordance with section 89 of the *Act*, sent via registered mail on August 10, 2009. The Canada Post tracking number was provided in the Landlord's evidence. The Tenant is deemed to be served the hearing documents on August 15, 2009, the fifth day after they were mailed as per section 90(a) of the *Act*.

The Landlord appeared, gave affirmed testimony, was provided the opportunity to present her evidence orally, in writing, and in documentary form.

The Tenant did not appear despite being served with notice of today's hearing in accordance with the *Act* and despite having his own application for dispute resolution scheduled for the same hearing date and time.

All of the testimony and documentary evidence was carefully considered.

Issue(s) to be Decided

Is the Landlord entitled to an Order under sections 38, 67, and 72 of the *Residential Tenancy Act*?

Is the Tenant entitled to an Order under sections 38, 67, and 72 of the *Residential Tenancy Act*?

Background and Evidence

The fixed term tenancy began on October 1, 2007 with a set expiry date of September 30, 2008; after which the tenancy switched to a month to month tenancy. Rent was payable on the first of each month in the amount of \$1,140.00 and the Tenant paid a security deposit of \$565.00 on August 22, 2007. A move-in inspection was conducted and both parties signed the move-in inspection form on October 1, 2007.

The Landlord testified and referred to her documentary evidence whereby the Tenant sent the Landlord an e-mail on July 20, 2009 advising the Landlord that he would not be attending the move-out inspection. On July 24, 2009, the tenant sent the Landlord another e-mail advising the Landlord he had vacated the rental unit and was providing the Landlord with his forwarding address.

The Landlord referred to her picture and documentary evidence to support her monetary claim for carpet cleaning, supplies and labor to patch and repair holes in two doors, replace the toilet paper roll hanger, replace the broken fridge shelf, replace globe lights for the bathroom and other burnt light bulbs, removal of broken furniture, and the cost to clean the rental unit for a total claim of \$387.95.

Analysis

Landlord's Application

I find that in order to justify payment of damages under sections 67 of the *Act*, the Applicant Landlord 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, in this case the Landlord, bears the burden of proof and the evidence furnished by the Applicant Landlord 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 loss or to rectify the damage
4. Proof that the claimant followed section 7(2) of the *Act* by doing whatever is reasonable to minimize the damage or loss

In regards to the Landlord's right to claim damages from the tenant, Section 7 of the *Act* states that if the landlord or tenant does not comply with this *Act*, 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 to order payment under these circumstances.

Based on the testimony and documentary evidence before me I find that the Tenant has failed to comply with section 37 of the *Act* which states that when the Tenant vacates the rental unit, at the end of the tenancy, the Tenant must leave the rental unit clean and undamaged. Based on the aforementioned, I find that the Landlord has proven the test for damage or loss as listed above and I hereby approve her claim.

Filing Fee \$50.00- I find that the Landlord has succeeded with her application and is entitled to recover the cost of the filing fee from the Tenant.

Monetary Order – I find that the Landlord is entitled to a monetary claim, that this claim meets the criteria under section 72(2)(b) of the *Act* to be offset against the Tenant's security deposit, and that the Landlord is entitled to recover the filing fee from the Tenant as follows:

| | |
|--|-----------------|
| Carpet Cleaning | \$157.50 |
| Materials to repair / patch / paint holes in doors | 18.97 |
| Labor to repair and paint holes in two doors | 60.00 |
| Replacement light bulbs | 5.24 |
| Pick up and removal of damaged furniture | 63.00 |
| Replacement refrigerator shelf | 33.24 |
| Cleaning of Rental Unit (2 hours x \$25.00) | 50.00 |
| Filing fee | <u>50.00</u> |
| Subtotal (Monetary Order in favor of the Landlord) | \$437.95 |
| Less Security Deposit of \$565.00 plus interest of \$11.58 from August 22, 2007 to November 23, 2009 | -576.58 |
| TOTAL OFF-SET AMOUNT DUE TO THE TENANT | \$138.63 |

The Landlord is hereby ordered to refund the Tenant the balance of his security deposit in the amount of \$138.63.

Tenant's Application

Section 61 of the *Residential Tenancy Act* states that upon accepting an application for dispute resolution, the director must set the matter down for a hearing and that the Director must determine if the hearing is to be oral or in writing. In this case, the hearing was scheduled for an oral teleconference hearing.

In the absence of the Applicant Tenant, the telephone line remained open while the phone system was monitored for ten minutes and no one on behalf of the Applicant Tenant called into the hearing during this time. Based on the aforementioned I find that the Tenant has failed to present the merits of his application and the application is dismissed, without leave to reapply.

Conclusion

Landlord's Application

A copy of the Tenant's decision will be accompanied by a Monetary Order for \$138.63. The order must be served on the Landlord and is enforceable through the Provincial Court as an order of that Court.

Tenant's Application

The Tenant's application is HEREBY DISMISSED, without leave to reapply.

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 23, 2009.

Dispute Resolution Officer