



Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing and Social Development

Decision

Dispute Codes:

MND Monetary Order for Damage to the Unit/Site/Property

MNSD Retain security Deposit

FF Recover the Filing Fee for this Application from the Respondent

Introduction

This Dispute Resolution hearing was convened to deal with an Application by the landlord for a monetary order for rent and utility arrears and compensation for damage or loss under the Residential Tenancy Act, (the Act), and an order to retain the security deposit in partial satisfaction of the claim. The amount of claim stated in the application was for \$8,987.39 based on \$2,680.00 rent owed, \$1,526.10 utilities owed for and the landlord's expenditures to clean and repair the unit.

Both parties appeared and gave testimony.

Issue(s) to be Decided

The landlord was seeking compensation for rent, utilities, damages and loss under the Act. The issues to be determined based on the testimony and the evidence is whether the landlord is entitled to monetary compensation under section 67 of the *Act* for rent and utilities owed and for damages or loss and to retain the security deposit.

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

Background and Evidence

The tenancy began in July 2004 and current rental rate was \$1,340.00. A security deposit of \$647.50 was paid. The tenancy ended for unpaid rent on January 5, 2010. The landlord testified that the tenant failed to pay rent for December 2009 and a Ten-Day Notice to End Tenancy for Unpaid Rent was issued. However, this Notice was not pursued by the landlord as it was found to be flawed. After the tenant failed to pay rent in January 2010, a second Ten-Day Notice was issued on January 4, 2010. A copy of the Notice was in evidence showing rent owed in the amount of \$1,340.00 for December 2009 and \$1,340.00 for January 2010. The landlord was seeking \$2,680.00 in compensation.

The landlord testified that the tenant owed utilities including a gas bill of \$157.00 and an annual water bill of \$1,369.10. The total for utilities is \$1,562.10 and is claiming this amount

On January 5, 2010 the landlord received an email response from the tenant stating: *"This memo will confirm that I relinquish full and complete possession to the above property to (Landlord) effective January 5th 2009 as is. The personal effects within this property belongs to (other named individuals) and will be relocated should they 'not ' assume a leasehold interest in this property by January 15, 2010."* The landlord testified that the tenant's message was interpreted to mean that the tenant was not going to return to the unit to retrieve any of the possessions left there. The landlord stated that the tenant had surrendered the keys to the unit to neighbouring tenants and had left a list of items that had been sold to the other tenants.

The landlord testified that the tenant had left the unit in a deplorable state with garbage, food, clothes and furniture left in the unit. The landlord testified that the unit was also filthy with a badly stained carpet from the tenant and the tenant's dog. The landlord provided a copy of the move-in and move-out condition inspection reports and numerous photos of the unit taken on January 5, 2010. According to the landlord, the

items listed as sold by the tenant were set aside and stored for pick-up by the purchaser and the remainder of the items including garbage and personal belongings for which the total value was under \$500.00 were sorted, and either stored or hauled away for disposal at a cost of \$700.00 plus \$200.00 dumping fee. The landlord is claiming reimbursement and had submitted an invoice into evidence to support the claim. The landlord testified that the unit also had to undergo extensive clean-up at a cost of \$570.00 representing 2 cleaners paid at \$30.00 per hour and this is being claimed.

In addition, the landlord found that the carpet was so badly soiled and worn that it could not be cleaned and had to be replaced. The carpet, according to the landlord was approximately 8 years old and the landlord was claiming one-third of the cost of installing a lesser quality carpet. A copy of the invoice from the carpeting company confirmed that the expenditure was \$3,543.09.

The landlord's testimony was supported by an expert witness who stated that the original carpet was "high end" and would have been expected to last 13 to 15 years. When asked to estimate the age of the carpet the witness stated that it looked to be newer, five or six years old, but had evidently been worn by abuse. The landlord's claim for the carpet was \$1,180.91.

The landlord was claiming reimbursement for the \$132.76 cost of repairing a broken window left by the tenant and had submitted the bill for this repair.

The landlord also hoped to recoup the \$200.00 cost of repainting which the landlord stated was necessary due to the tenant's breach of the non-smoking term in the tenancy agreement by smoking in the unit. A copy of the invoice was in evidence.

The landlord's total monetary claim shown on the application was \$6,008.86 plus the \$100.00 cost of filing.

The tenant acknowledged that \$1,340.00 rent for December 2009 and \$1,340.00 for January 2010 was not paid. The tenant did not dispute that he owed December rent but stated that he should not be liable for the rent being claimed for January. The

tenant based this on the fact that he had complied with the landlord's Notice to vacate by leaving as soon as possible, on January 5, 2010, but was then unfairly prevented from returning to retrieve his property as was his right to do.

The tenant acknowledged that he still owed utilities including a gas bill of \$157.00 and an annual water bill of \$1,369.10 to the landlord. The tenant pointed out that the landlord's own evidence verified that the landlord had never served a demand for payment of the utilities until after-the-fact.

In regards to the tenant's notification given to the landlord by email on January 4, 2010, the tenant testified that the landlord's interpretation was not accurate and that the message meant that the tenant or others would retrieve the tenant's personal effects left on the property and relocate these items should the new tenants not move in by January 15, 2010. The tenant stated that he arrived on June 14, 2010 to retrieve his property and was not allowed on site. The tenant stated that he had sold some of his furniture to other residents in the building, and had provided a list for the landlord's benefit. However, there were many items still on site that belonged to the tenant and he was denied access to remove these. The tenant testified that he arrived to find a single worker taking out items left, not two workers as claimed. The tenant stated that he was given a small portion of his belongings, including some clothing personal effects and a sleeping bag by the person hauling the items. The tenant stated that he had lost almost all of his worldly possessions.

The tenant acknowledged that he had left the unit dirty and in disarray but stated that he had arranged to have an individual do the cleanup and this was done. The tenant pointed out that the photos submitted by the landlord were taken before the cleanup. The tenant disputed the claimed cost of \$570.00 for 2 cleaners at \$30.00 per hour.

The tenant also disagreed with the hauling charges of \$900.00 and stated that some items, such as his work files, were removed by his employer, and some of the furnishings were kept for the new occupants. The tenant stated that many things were

never hauled away at all. The tenant pointed out that the \$200.00 claimed as the “dumping fee” had not been sufficiently verified as a genuine cost incurred. The tenant stated that he had lined up some people to help him remove his remaining belongings and had the landlord permitted him to proceed with this, there would have been a lot less material to deal with. Moreover, according to the tenant, he visited the site on January 14 and 15, 2010, and saw that removing the items did not take 2 days.

The tenant estimated that the cleaning and hauling costs should not have exceeded than \$350.00.

In regards to the carpet, the tenant agreed that the carpet had to be replaced, but this was due to it being worn . The tenant stated that the carpet was clearly over 10 years old and pointed out that the move-in condition inspection report which was created in July 2004, contained several notations about the carpet being already worn at the beginning of the tenancy. The tenant stated that the carpet had been cleaned more than once during the tenancy but acknowledged that he did not clean the carpet prior to vacating. However, he was aware that the new tenant had requested replaced carpeting. The tenant objected to any costs for the carpet being allotted to him.

The tenant did not dispute the \$132.76 cost of repairing a broken window being claimed by the landlord and agreed that this was owed.

In regards to the claim for painting, the tenant stated that the unit had not been painted during the tenancy and was due for repainting as a maintenance matter.

Analysis

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 this Act, the regulations or the tenancy agreement. I find that the tenant did not pay the rent when rent was due on December 2009 and did not pay rent due on January 1, 2010.

Accordingly, I find that the landlord is entitled to \$1,340.00 rent for December 2009 and \$1,340.00 for January 2010.

I find that the landlord is entitled to \$1,562.10 for utilities as agreed by both parties.

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, and that this damage or loss happened solely because of the actions or neglect of the Respondent in violation of the Act or agreement
- [2] Verification of the actual amount required to compensate for the claimed loss or to rectify the damage.
- [3] 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 tenant. Once that has been

established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. Finally it must be proven that the claimant did everything reasonable to mitigate the damage or losses that were incurred.

It must first be determined whether there was a violation of the Act by the tenant. I find that section 32 of the Act contains provisions regarding both the landlord's and the tenant's obligations to repair and maintain. A landlord must provide and maintain residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law, and having regard to the age, character and location of the rental unit to make it suitable for occupation by a tenant. A tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the residential property to which the tenant has access. While a tenant of a rental unit must repair damage to the rental unit caused by the actions or neglect of the tenant, this section of the Act specifies that a tenant is not required to make repairs for reasonable wear and tear.

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.

In regards to the cleaning costs of \$570.00 and removal and hauling costs of \$900.00, I find that although the evidence clearly established that the unit required significant cleaning and garbage removal, the invoices submitted by the landlord were not sufficiently detailed to explain the claimed costs. I find that the photographs were taken weeks prior to the date that the landlord's cleaners arrived, which opens the possibility that some cleaning may have been done on behalf of the tenant before that date.

I find that the tenant would be responsible for a portion of the costs for removing garbage and personal effects, but not all. Evidently, some of the items in the unit belonged to another party. I also accept that the tenant would likely have removed some of his remaining personal effects if permitted to do so. Therefore, I am not able to

determine what the tenant's contribution should be. Accordingly this portion of the landlord's application is dismissed.

The tenant has agreed to cleaning costs in the amount of \$350.00 and I find that the landlord is entitled to this amount for the cleaning and garbage removal.

In regards to the carpet, I have referred to normal useful life of the item as provided in Residential Tenancy Policy Guideline 37 and I find that the average useful life of a carpet is 10 years. I find that this carpet was at or nearing the end of its function, particularly as it was noted as being "worn" predating the tenancy in 2004. Awards for damages are intended to be restorative, meaning the award should place the applicant in the same financial position had the damage not occurred. In this instance, although under normal circumstances the tenant should have complied with the Act and attempted to clean the carpet prior to vacating, I find that the tenant's violation of this obligation did not impose additional costs on the landlord. Accordingly this portion of the landlord's application is dismissed.

In regards to the \$132.76 cost of repairing the broken window, I find that this claim was agreed to by both parties.

In regards to the \$200.00 costs of painting, I accept that this was necessary and that the landlord did incur the cost. However, I have referred to normal useful life of the item as provided in Residential Tenancy Policy Guideline 37 and find that the paint finish had exceeded its normal useful life of 4 years. Therefore I find that the need was a wear and tear issue. Accordingly this portion of the landlord's application is dismissed.

I find that the total amount of damages for which compensation must be paid is \$4,788.86 comprised of \$2,680.00 for rent, \$1,526.10 for utilities, \$350.00 for cleaning, \$132.76 for window repairs and \$100.00 for the cost of this application. I order that the landlord retain the security deposit and interest of \$670.45 in partial satisfaction of the claim leaving a balance due of \$4,118.41.

Conclusion

Based on the testimony and evidence presented during these proceedings, I find that the landlord is entitled to monetary compensation in the amount of \$4,118.41 and hereby grant a monetary order in favour of the landlord for that amount. This order must be served on the landlord and may be filed in Small Claims Court for enforcement if necessary.

June, 2010

Date of Decision

Dispute Resolution Officer