Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

Decision

Dispute Codes: MNSD

Introduction

This Dispute Resolution hearing was set to deal with an Application by the landlord for a monetary order for loss of rent, compensation for damage to the unit and money owed or compensation for damage or loss under the Act. The landlord appeared and gave testimony.

Despite being served in person on April 20, 2011, the respondent did not appear.

Issue(s) to be Decided

The landlord was seeking a monetary order for damages and to retain the security deposit. The issue 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 damages or loss.

Background and Evidence

The landlord testified that the tenancy began on April 1, 2010. The rent was $1,150.00 and a security deposit of $575.00 was paid. The landlord testified that there was no move-in condition inspection report completed at the start of the tenancy.

The tenant moved out on March 22, 2011after the landlord served a Ten Day Notice to End Tenancy for Unpaid Rent. The landlord testified that the tenant left no written forwarding address and did not return the keys. The landlord stated that an application had been made for a Direct Request proceeding that on April 4, 2011, resulted in the landlord being awarded a monetary order for rent owed for half a month in August 2010 and all of the rent owed for the entire month of March 2011. A Order of Possession dated April 4, 2011 was also granted to be effective 2 days after service, but was moot by that time as the tenant had vacated pursuant to the landlord's Ten Day Notice.

The landlord testified that on March 22, 2011 the tenant was offered an opportunity to participate in a move-out inspection and submitted a transcript of the text messages

between the parties with respect to this discussion. The evidence indicated that the tenant stated that there was an intent to come back and clean the unit, but the locks had already been changed by the landlord. The landlord testified that the tenant did not show up for the inspection and it was completed in the tenant's absence.

The landlord testified that the tenant had not left the unit in a reasonably clean condition as required by the Act and approximately 20 hours of cleaning was required. The landlord testified that some of the walls required patching and re-painting and, after trying to clean the carpet, they found it needed to be replaced. The landlord testified that garbage was left that had to be hauled away in 3 separate trips. The landlord testified that screens and a post in the carport also had to be repaired. The landlord testified that items such as valances, curtains, support brackets, the fireplace remote and a towel bar were missing and had to be replaced. The landlord testified that the locks also had to be changed. Photographs labeled "before" and "after" were submitted showing the condition of different areas of the unit.

The landlord submitted a time sheet listing the labour costs, totaling 116 hours at $25.00 per hour and 5 hours at $55.00 per hour for compensation of $3,175.00.

The landlord also submitted receipts, invoices and estimates for replacement items and supplies totaling $3,794.91.

The landlord was also requesting $1,150.00 loss of rent for the month of April based on being unable to re-rent due to the repairs and cleaning.

Analysis

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 a contravention of the Act on the part of the respondent.

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.

I find that the tenant's role in causing damage can normally be established by comparing the condition before the tenancy began with the condition of the unit after the tenancy ended. In other words, through the submission of completed copies of the move-in and move-out condition inspection reports featuring both party's signatures.

With respect to the move-in inspection, section 23(1) on the Act requires that the landlord and tenant together must inspect the condition of the rental unit on the day the tenant is entitled to possession of the rental unit or on another mutually agreed day.

Both sections 23(3) for move-in inspections and section 35 for the move-out inspections state that the landlord must offer the tenant at least 2 opportunities, as prescribed, for the inspection. Part 3 of the Regulations goes into significant detail about the specific obligations regarding how and when the Start-of-Tenancy and End-of-Tenancy Condition Inspections and Reports must be conducted.

In this situation, I find that the landlord failed to comply with the Act in regard to the statutory requirement to conduct a move-in condition inspection report signed by both parties, and to give a copy to the tenant.

In regard to the landlord's allegation that the tenant did not cooperate with the landlord's attempt to schedule a move-out condition inspection, the Act contains provisions that anticipate such situations. In particular, section 17 of the Regulation details exactly how the inspection must be arranged as follows:

(1) A landlord must offer to a tenant a first opportunity to schedule the condition inspection by proposing one or more dates and times.

(2) If the tenant is not available at a time offered under subsection (1),

(a) the tenant may propose an alternative time to the landlord, who must consider this time prior to acting under paragraph (b), and

(b) the landlord must propose a second opportunity, different from the opportunity described in subsection (1), to the tenant by providing the tenant with a notice in the approved form.

(3) When providing each other with an opportunity to schedule a condition inspection, the landlord and tenant must consider any reasonable time limitations of the other party that are known and that affect that party's availability to attend the inspection.

The Act states that the landlord must make the inspection and complete and sign the report without the tenant if

(a) the landlord has complied with subsection (3), and

(b) the tenant does not participate on either occasion.

In this instance, I accept that the tenant declined to participate in the landlord's first attempt to schedule the move out condition Inspection.

To be valid, an inspection must be arranged between the parties upon the vacating of the unit as required by the Act. A landlord can complete the inspection in the absence of the tenant by following all of the required steps and must be prepared to prove that this was done. I find that there is insufficient proof that the landlord ever issued the notice on the approved form giving the tenant a final opportunity to participate in the move out condition Inspection and that this was properly served on the tenant.

I find the practice followed by this landlord for both the start-of-tenancy and the end-of-tenancy inspections to be noncompliant with the Act and I find that the landlord cannot rely on section 36(1) to establish that the tenants extinguished their rights by not cooperating in the move-out inspection.

I further find that the landlord had impeded the tenant's access to the unit after they had removed their possessions, preventing them from doing any of the required cleaning or repairs and this occurred due to the landlord prematurely changing the locks on March 22, 2011.

I find that the landlord was not granted a legal Order of Possession until after April 4, 2011 and therefore the tenant still had lawful possession on March 22, 2011 and should have had access to the unit and the opportunity to clean the unit. In addition, I note that the landlord claimed and was granted full rent from the tenant for the month of March 2011 but had taken possession of the 15 days prior to the earliest possible effective date of the Order of Possession which, if served in person on April 4, 2011, would have been effective on April 6, 2011.

Given the above, although I accept that the unit was left in an unclean and damaged state, I find that the landlord's claims and evidence submitted by the landlord does not sufficiently meet element 2 and element 4 of the test for damages. I do, however, accept that the tenant still had access to the exterior of the rental unit and failed to remove items left there after the tenancy ended. I therefore grant the landlord $27.50 for disposal fees and $200.00 for labour relating to garbage removal of items left on the premises by the tenant

Accordingly I find that the landlord is entitled to be compensated in the amount of $277.50 comprised of $227.50 for garbage removal and $50.00 for half of the cost of the application.

Conclusion

Based on the testimony and evidence I find that the landlord is entitled to retain $277.50 from the tenant's security deposit of $575.00 leaving a credit in favour of the tenant in the amount of $347.50 which must be refunded in accordance to section 38 of the Act.

The remainder of the landlord's application is dismissed without leave.

I hereby grant a monetary order in favour of the tenant for $347.50. This order must be served on the landlord and may be enforced through Small Claims if not paid.

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: July 22, 2011.

Residential Tenancy Branch