



Dispute Resolution Services

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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 compensation for or damage or loss under the Act. The landlord appeared and gave testimony.

Despite being served by registered mail sent on June 14, 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, 2006. The rent was \$1,775.00 and a security deposit of \$850.00 was paid.

Submitted into evidence in support of the monetary claim was a copy of a letter to the tenant dated June 13, 2011, copies of invoices for work done and receipts for purchased items. There was also a written statement from an individual who had replaced blinds, a register cover and fixed a door before the tenant took possession in 2006. A copy of a handwritten document dated May 31, 2011 purporting to be a "move out inspection" report was also included listing deficiencies in the rental unit with both the tenant's and the landlord's signatures at the bottom. A similar handwritten document dated May 31 was submitted indicating that it was a "move-in inspection" report. The landlord testified that this was the move in inspection report for the new renter who had moved in after the tenant vacated. The landlord testified that no move-in condition inspection report respondent tenant was available to confirm the condition of the unit in 2006 when the tenant moved in. No copy of the tenancy agreement was in evidence.

The landlord testified that the tenancy agreement included a fully operational weed wacker and a lawn-mower with a 50-foot extension cord. However, when the tenant left, the string on the weed wacker was gone and the lawn mower extension cord was also missing. The landlord is claiming compensation for the replacement cost of \$22.38 and \$44.80. The landlord submitted receipts for the purchase of these items.

The landlord testified that rubbish was left on the property and the landlord incurred professional removal costs of \$280.00. An invoice was provided in evidence to support the claim.

The landlord the tenant had left the unit not reasonably clean and there were damages including ruined blinds, a missing light fixture, missing smoke detectors and damaged switch covers. The landlord is claiming \$391.32 for materials and \$200.00 for labour.

The landlord testified that testified that on the final day of the tenancy, the tenant mowed the lawn but refused to sweep up clippings that had blown over into the neighbour's yard and the landlord incurred sweep-up labour costs of \$20.00, which is being claimed. The landlord supplied a copy of an invoice for this charge.

Testimony from the tenant's witness supported the above claims.

The landlord testified that the tenant had freely acknowledged the damage being claimed as evidenced by their signature on the move-out inspection report. The landlord felt that that the fact that the tenant's signature was at the bottom of the list of deficiencies would suffice to justify the compensation being claimed. The landlord stated that in addition to this, the fact that the tenant did not appear to dispute the charges for the repairs and replacement items, should be considered as a determining factor in deciding whether or not the landlord had met the burden of proof to support the monetary claims.

The total amount being claimed was \$958.50. However, the landlord stated that they were only seeking to keep the \$850.00 deposit and any interest in satisfaction of the claim.

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.

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 compliant move-in and move-out condition inspection reports.

Both sections 23(3) for move-in inspections and section 35 for the move-out inspections state that the inspection reports must be completed and that a failure to conduct either a move-in or move-out inspection will function to extinguish the landlord's right to claim against the security deposit. Part 3 of the Regulations goes into significant detail about specific obligations regarding how these condition inspections and reports must be conducted the required format of the document and precisely what information must be included in the reports.

In this situation, I find that the landlord failed to comply with the Act in regard to the statutory requirement to complete a move-in inspection report. I also find that the document presented as a move-out inspection report neglected to contain all of the mandatory elements required to make it valid for the purpose of evidentiary support.

I do not agree with the landlord that the absence of the tenant at the hearing would automatically suffice to validate the landlord's monetary claims for damages.

While I do accept the landlord's evidence verifying that costs were genuinely incurred to purchase items, such as blinds a smoke alarm, replacement vent, switch-plate covers, string for the weed-wacker, an extension cord and a light fixture, as well as some charges for labour, I find that it is still necessary for a claimant to meet all elements of the test for damages in relation to the claim for compensation.

With respect to the claim for the extension cord and the weed wacker string, I find that the Act does not play any role in regard to such matters and this would have to be found to be attributable to a violation of a specific term in the tenancy agreement. However, no copy of the tenancy agreement was submitted into evidence. Accordingly, this portion of the application must be dismissed.

With respect to the costs for rubbish removal, I accept the landlord's testimony that the tenant left items that needed to be taken away from the site at a cost of \$280.00.

With respect to the missing smoke alarm and light fixture, I accept the landlord's testimony that these items were removed, and that the landlord spent \$14.98 and \$12.99 plus tax of \$3.36 .

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. Where an item has a limited useful life, it is necessary to take into account the age of the damaged item and reduce the replacement cost to reflect the depreciation of the original value. In order to estimate depreciation of the replaced item, reference can be made to Residential Tenancy Policy Guideline 37 in order to accurately assess what the normal useful life of a particular item or finish in the home would be.

The average useful life for smoke alarms and light fixtures is 15 years. Presuming that these items were brand new at the start of the tenancy, I find that the landlord is entitled to be reimbursed \$21.00 in compensation for these items.

With respect to the cost of the blinds, I find that the landlord did purchase numerous sets of blinds. However, the landlord did not prove that these newly purchased blinds were to replace existing blinds in the rental home that were completely ruined by the tenant. I find that nothing is mentioned in the document that the landlord held out to be the move-out inspection report regarding any of the blinds being destroyed. I find that the portion of the landlord's application respecting the purchase and installation of the blinds must be dismissed.

In regard to the claims for the vent covers and light switch covers, I find it was not proven that the damage was due to anything other than normal wear and tear.

I find that the tenant's obligation to sweep up lawn clippings, would have to relate to a term in the tenancy agreement which was not in evidence. Accordingly I find that this portion of the landlord's application must be dismissed.

With respect to the cost of labour supported by the invoice dated June 6, 2011, I find that there was not sufficient detail to determine the specific amount of time spent on each of the listed tasks nor the rate of pay being charged per hour. I have already

found that any compensation for costs associated with the replacement of the blinds were not warranted. Accordingly, I find that this portion of the landlord's claim must be dismissed.

I find that the landlord is entitled to total monetary compensation in the amount of \$351.00 comprised of \$280.00 for garbage removal, \$21.00 for the smoke alarm and light fixture, and \$50.00 for the cost of filing this application.

Conclusion

Based on the testimony and evidence I find that the landlord's application is entitled to retain \$351.00 from the tenant's security deposit and interest of \$879.04 leaving a credit in favour of the tenant in the amount of \$528.04 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 \$528.04. 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: September 13, 2011.

Residential Tenancy Branch