



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

Decision

Dispute Codes: MNSD, FF

Introduction

This Dispute Resolution hearing was set to deal with an Application by the landlord for a monetary order for general cleaning, cleaning of the carpet and garbage disposal plus the cost of filing the application. The total amount being claimed was \$350.00 and the landlord seeks to retain the security deposit in satisfaction of the claim.

Both parties appeared and gave testimony during the conference call.

Issue(s) to be Decided

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 damages or loss.

Background and Evidence

The tenancy began in February 2011 and ended on July 1, 2011. The monthly rent was \$700.00 and a security deposit of \$350.00 was paid. The landlord submitted into evidence a copy of the tenancy agreement and pointed out that the addendum signed by the tenant contained a term that required the tenant to have the carpets professionally cleaned and to supply a receipt. The landlord stated that the carpet was not cleaned and the tenant did not submit a receipt to verify that it was. The landlord testified that there were two stains on the carpet that had to be addressed.

The landlord stated that they incurred a cost of \$52.00 to rent the cleaner and to purchase the supplies and 4 hours of labour at \$15.00 per hour. The total claim for the carpet cleaning was \$112.00.

The tenant testified that there was only one carpet located in the bedroom of the home as the remainder of the unit was wood flooring. The tenant stated that they had utilized a cleaner to steam clean the carpet themselves and this was the equivalent to a professional cleaning. The tenant stated that a four-hour charge for cleaning the one carpet would be excessive in any case. The tenant disputed the claim.

The landlord testified that although no formal move-in and move-out condition inspection reports were done, the home was reasonably clean at the start of the tenancy, but was left in a dirty condition at the end of the tenancy. The landlord testified that 5 hours of cleaning were required at a value of \$15.00 per hour, totaling \$60.00 including the cleaning supplies. The landlord testified that the tenant was instructed to call the landlord, once the unit was completely vacated, to arrange a final walk-through. The landlord testified that the landlord's wife met with one of the co-tenants and took photos of the unit and retrieved the key. The landlord supplied photos of the unit showing areas of the interior that were not clean, including the stove and oven.

The landlord stated that the tenant was not permitted to enter the unit to be shown the deficiencies at the time because of a security concern about the aggressive conduct exhibited by the co-tenant. The landlord testified that there was insufficient time between the tenant vacating and the new renters wanting to move in to re-arrange the inspection process and give the tenant an opportunity to take care of the neglected tasks. The landlord feels that the charge of \$60.00 is justified.

The tenant testified that no move-in condition inspection was ever done at the start of the tenancy as required by the Act. The tenant testified that the unit was not pristine when the tenant took occupancy. With respect to the stove, the tenant testified that attempts were made to clean it and it was left in a better state than when the tenancy began. The tenant testified that 7 hours of cleaning had been spent by the tenants at the end of the tenancy, in order to get the unit in a fairly clean condition. The tenant's position is that this would meet the tenant's obligation under the Act.

The tenant also took issue with the photos supplied by the landlord, pointing out that they were not dated and could have been taken at any time. The tenant testified that the parties had set the time to meet for the inspection and key exchange at noon and her co-tenant was waiting for the landlord for two hours to show up. The tenant testified that she had to contact the landlord to find out why nobody appeared and when the landlord's wife attended, she would not permit her co-tenant to enter the unit. The tenant testified that the landlord's wife then went in and took photos without the tenant present. The tenant testified that the failure of the landlord to do a final walk-through jointly with the tenant, point out all the problem areas and then give the tenant a chance to rectify these alleged deficiencies, was an unfair process that did not comply with the Act. According to the tenant, if the landlord had genuine security concerns, then the landlord should have made adequate arrangements to do a proper inspection.

The landlord testified that the tenant had left excess garbage to be collected and some additional items remaining in the tenant's storage area. The landlord testified that a cost of \$27.55 was charged for dump fees and provided a copy of the receipt. The

landlord testified that three hours of labour at \$15.00 per hour was also incurred. The landlord is claiming a total of \$72.55 for garbage clean-up and removal. The landlord pointed out that the yard was left in a mess by the tenant's actions in adding excessive sod and fill from the neighbour's yard and leaving it in piles throughout the yard..

The tenant testified that the complex has more than one rental unit and there is no verification that all of the garbage disposed of by the landlord belonged to the tenant. The tenant testified that there were abandoned items already left in the tenant's storage area when the tenancy started and the tenant should not be held responsible for the cost of their removal. With respect to the yard, the tenant testified that the excess soil and sod was stored under the deck and it was the landlord that removed this, throwing it back into the neighbour's yard. The tenant does not agree with 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 tenant 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 the claimant took steps pursuant to section 7(2) of the Act minimize the loss.

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.

In regard to the claim for the carpet cleaning costs in the amount of \$112.00, I find that this claim must be reduced, as a portion of it does not sufficiently meet element 2 of the test for damages. While there is proof that the term in the tenancy agreement was not strictly complied with by the tenant, I find that the landlord did not adequately prove that the claimed costs were incurred. Accordingly, I find the landlord is entitled to \$75.00 for the carpet cleaning charges.

With respect to the claimed cost for cleaning and garbage removal, I find that 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 proving whether or not the tenant had complied with this requirement, I find that this can best be established with a comparison of the unit's condition when the tenancy began with the final condition of the unit after the tenancy ended. In other words, through the submission of move-in and move-out condition inspection reports containing both party's signatures. Section 23(3) of the Act covering move-in inspections and section 35 of the Act for the move-out inspections places the obligation on the landlord to complete the condition inspection report in accordance with the regulations and both the landlord and tenant must sign the condition inspection report after which the landlord must give the tenant a copy of that report in accordance with the regulations.

In this instance, the landlord admitted that neither a move-in condition inspection report nor move-out condition inspection report was completed. I find the failure to comply with sections 23 and 35 of the Act has hindered the landlord's ability to establish the end-of-tenancy condition and I find that the landlord's claim for reimbursement for the cleaning cost and garbage removal charges must therefore be dismissed.

With the exception of the cost of filing the application, I find that the landlord's claim for reimbursement of the cost of postage and administration costs in preparing for the Dispute Resolution Hearing are not compensable expenditures covered under any provision of the Act and must therefore be dismissed.

Conclusion

Based on the testimony and evidence I find that the landlord is entitled to retain \$100.00 from the tenant's \$350.00 security deposit comprised of \$75.00 for the carpet-cleaning and half of the cost of the application in the amount of \$25.00, leaving a balance of \$250.00 as a credit to the tenant. I hereby grant a monetary order in the amount of \$250.00 to the tenant. This order must be served on the landlord and may be enforced in small claims court if necessary.

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

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: October 04, 2011.

Residential Tenancy Branch