



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNR, MND, MNDC, MNSD, FF

Introduction

This Dispute Resolution hearing was set to deal with an Application by the landlord for a monetary order for rent owed, loss of revenue and compensation for damages.

The applicant was present and participated in the hearing. Despite being served with the Notice of Hearing documents by registered mail sent on November 10, 2012, the respondent did not appear and the hearing was therefore conducted in the respondent's absence.

Issue(s) to be Decided

Is the landlord entitled to compensation under section 67 of the *Act* for rent, damages and loss of rent?

Background and Evidence

The landlord testified that the tenancy began on September 16, 2011 and the rent was \$1,150.00.

The tenancy was ended after a previous hearing on October 1, 2012, in which the landlord was granted an Order of Possession and a monetary order for rental arrears owed for the month of September 2012.

The landlord testified that the tenant finally moved out on October 3, 2012. The landlord stated that the tenant had left the rental unit in an unclean and damaged condition. The landlord acknowledged that no move-in and move-out condition inspection reports were completed. However, the landlord submitted evidence including a copy of a building inspection report, copies of invoices and estimates, photographs and written testimony.

The landlord is claiming \$2,690.67 for replacement flooring due to ruined carpeting that was approximately 4 years old. The landlord submitted photographs of the damage and pointed out that the building inspection report noted urine damage and stains on the carpeting. The landlord also submitted estimates and a final invoice for laminate flooring that was installed in the unit.

The landlord testified that she did the cleaning herself, but is claiming cleaning costs of \$548.00 based on estimates from cleaning firms. The landlord is also seeking to be reimbursed \$42.00 in disposal fees and \$19.95 in recycling fees. Photos and invoices were submitted into evidence in support of this claim.

In addition to the above, the landlord is claiming \$1,150.00 loss of revenue for the month of October 2012 and \$1,150.00 loss of revenue for the month of November 2012, because she was not able to advertise the unit and find a renter until December because of all the cleaning and repairs.

Analysis

Section 7(a) of the Act permits one party to claim compensation from the other for costs that result from a failure to comply with this Act, the regulations or their tenancy agreement. Section 67 of the Act grants a Dispute Resolution Officer the authority to determine the amount and to order payment under these 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. 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 Respondent's 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 reasonable steps to minimize the loss or damage.

With respect to the claim for the cost of cleaning, 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.

To determine whether or not the tenant had complied with section 37 of the Act, I find that this can best be established by comparing the unit's condition as it was 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.

Conducting move-in and move out condition inspection reports are a requirement of the Act under section 23(3) and section 35 of the Act and places the obligation on the landlord to complete the condition inspection report in accordance with the regulations. 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 the Act and the absence of these reports has impacted the landlord's ability to prove that the tenant should be held accountable for the costs of cleaning or repairs.

However, based on a preponderance of evidence, I do accept that the rental unit was not left in a reasonably clean condition at the end of the tenancy and I find that some cleaning was required for the unit to qualify as meeting the "reasonably clean" standard required under the 'Act.

As the carpet was replaced, I find that the cleaning would be restricted to a general clean-up of the unit. I find that the landlord is entitled to be compensated for 7 hours of cleaning at a rate of \$20.00 per hour for total compensation of \$140.00. I accept that the landlord incurred the disposal costs totaling \$61.95 and is also entitled to be reimbursed for this amount.

With respect to the carpeting, as the carpets were approximately 4 years old, I find that they had been used by prior residents. Without a move in inspection report to establish the condition of the flooring at the time the tenant moved in, there is no way to know whether any or all of the flooring had been subject to previous damage or staining. However, based on the evidence submitted by the landlord, I do accept that the tenant did cause damage beyond normal wear and tear and should be held accountable for part of the cost of replacing the carpets. I find that the lowest estimate obtained by the landlord for carpeting was \$1,720.00 from one supplier and \$2,247.57 from another supplier, including installation.

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 reduce the replacement cost by the depreciation of the original item. In order to estimate the pro-rated value of the replaced item, reference is made to normal useful life of the item as provided in Residential Tenancy Policy Guideline 40.

I find that the pro-rated loss of value in replacing four-year-old carpeting, based on age, would be between \$1,032.00 and \$1,348.00. Accordingly I find that the landlord is

validly entitled to be compensated \$1,190.00 by the tenant for the value of the damage caused to the flooring.

I find that the landlord is entitled to total compensation for cleaning and repairs in the amount of \$1,392.05.

Loss of Revenue

Section 7(2) of the Act requires that a landlord or tenant claiming monetary compensation must take reasonable steps to minimize the loss and I find that this includes an expectation that the landlord attempt to find a new renter without delay.

As the tenant moved out on October 3, 2012, I find that the landlord had approximately four weeks to actively advertise and get the rental unit ready for a new tenant for the month of November 2012. In this instance, I find that the landlord did not submit evidence that the rental unit was advertised during the month of October 2012.

I find that the delay in re-rental was partially due to the tenant over-holding three days into the month of October 2012 and also due to the new flooring installation that occurred during October, a portion of which the tenant was found to be accountable.

With respect to the claim for loss of revenue for the month of November 2012 I find that the evidence submitted by the landlord failed to sufficiently satisfy element 4 of the test for damages, as the landlord did not prove that she had advertised the rental during the month of October in anticipation of it being ready for occupancy by November 1, 2012.

Given the above, I find that the landlord is entitled to loss of revenue for a portion of the month of October 2012 in the amount of \$862.50.

Calculation

Given the above, I find that the landlord is entitled to be compensated \$2,354.55 in compensation, comprised of \$1,392.05 for cleaning and repairs, \$862.50 loss of revenue and the \$100.00 cost of this application. .

Based on the testimony and evidence presented during these proceedings, I hereby grant the landlord a monetary order under section 67 of the Act for \$2,354.55. This order must be served on the Respondent and may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

Conclusion

The landlord is partly successful in the application and is granted a monetary order for cleaning, repairs and loss of revenue.

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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: February 07, 2013

Residential Tenancy Branch