



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding UNIQUE ACCOMMODATIONS
and [tenant name suppressed to protect privacy]

Decision

Dispute Codes: MND, MNSD, FF

Introduction

This Dispute Resolution hearing was to deal with an Application by the landlord for a monetary order for compensation for damage or loss under the Residential Tenancy Act, (the Act) and an order to retain the security deposit in satisfaction of the claim.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained. The participants had an opportunity to submit documentary evidence prior to this hearing, and the evidence has been reviewed. The parties were also permitted to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the affirmed testimony and relevant evidence that was properly served.

Issue(s) to be Decided

Is the landlord entitled to monetary compensation under section 67 of the *Act* for damages or loss and to retain the security deposit?

Background and Evidence

The landlord testified that tenancy began on April 1, 2012 and rent was \$2,100.00. A \$1,050.00 security deposit was paid. The landlord testified that the tenancy ended on June 1, 2013.

The landlord testified that, when the tenant moved in, a move-in condition inspection report was completed and all issues with the suite were duly noted on the form. A copy of the move-in condition inspection report was in evidence. On June 1, 2013, the parties met to do the move-out inspection at the end of the tenancy. However, the tenant disagreed with the notations made by the landlord as noted on the move-out inspection form.

The landlord stated that the unit was not left in a reasonably clean condition as required by the Act and supported this claim with the move-out condition inspection report and photos of various areas of the unit.

The landlord is claiming \$210.00 for the cleaning and submitted a copy of an invoice. The tenant stated that, although the amount seemed excessive, they did consent to the cleaning claim.

The landlord is claiming \$600.00 reimbursement for the estimated costs of repairing and repainting the walls. The landlord testified that the tenant had left damaged spots in the drywall that had been filled, but not properly sanded and not re-painted. The landlord did not know the approximate age of the finish. The landlord testified that the re-painting was never done as the rental unit had since been sold.

The tenant argued that they were willing to repair and repaint the walls, but were advised by the landlord's agent that the landlord preferred to employ their own professionals to complete the work. The tenant testified that they could have touched-up the repaired spots, but no matching paint was available. The tenant pointed out that the landlord did not actually incur the claimed expense.

The landlord testified that the tenant had left scratches in the engineered wood flooring that were not there at the commencement of the tenancy, as verified by the move-in condition inspection report. The landlord stated that the floor was approximately 2 years old when the tenant moved in and the estimated repair costs, pro-rated to reflect the age, are \$888.00. The landlord testified that repairing the damage without replacing the entire floor is not likely possible. The landlord testified that the floor was not repaired or replaced and there are no future plans to do the repairs as the unit was sold after the tenant vacated.

The tenant stated that, when they moved in, the dining room had an existing table in it which impaired the ability to view the floor's condition. The tenant testified that after the table and chairs were removed minor scratches were evident in the surface. The tenant testified that they were not concerned about this as the tenant considered the condition to be "normal wear". The tenant disagrees with the landlord's claim for reimbursement of new flooring repair costs that were never incurred by the landlord.

Analysis

In regard 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 to 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,
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, and
4. Proof that the claimant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage.

Section 37 of the Act states, when a tenant vacates a rental unit, it must be left reasonably clean and undamaged except for reasonable wear and tear.

With respect to whether or not the landlord is entitled to costs for cleaning, I find that the tenant agreed that the unit was not left in a pristine state and consented to reimburse the landlord for the \$210.00 cost. Accordingly, I find that the landlord is entitled to \$210.00 compensation for cleaning costs.

With respect to the cost of repainting walls, poorly patched by the tenant, I find that section 37 of the Act requires that the tenant repair damage caused by the tenant, not attributable to normal wear and tear. In this regard, I accept the landlord's testimony that the tenant did not restore the unit to its former condition and thereby did violate section 37 of the Act. However, I find that the landlord did not actually suffer a monetary loss for the claimed costs of \$600.00.

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. Although I found that the tenant did violate the Act by leaving the unit damaged, this fact only satisfies elements 1 & 2 of the test for damages. I find that in order to satisfy element 3 of the test for damages, the landlord must meet the burden of proof to show that a quantifiable monetary loss actually resulted from the tenant's violation.

Given the above, I find that the landlord is not entitled to be compensated for potential losses related to the damaged walls.

In regard to the landlord's claim for reimbursement for the cost of repairing the scratched floors, I find that the tenant's allegation that the floors already had some pre-existing damage that could not be detected during the move-in condition inspection, has merit.

This finding is based on the fact that there were residual furnishings that had been left in the dining room that likely obscured part of the surface of the floors during the move-in inspection.

Section 14 of the Residential Tenancy Regulations states that:

"The landlord and tenant must complete a condition inspection described in section 23 or 35 of the Act[condition inspections] when the rental unit is empty..."

In addition to the above, I find that the landlord had never incurred the claimed cost of \$888.00, which was based on an estimate, and did not reflect a tangible monetary loss that was suffered by the landlord. Moreover, I find that there is no possibility that the landlord will ever have to pay the projected cost of the repairs because the property has already been sold.

Based on the evidence before me, I find that the landlord is entitled to total monetary compensation of \$235.00, comprised of \$210.00 for cleaning and \$25.00 for half the cost of the application.

I order that the landlord retain this amount from the security deposit of \$1,050.00, leaving a balance of \$815.00 to be refunded to the tenant.

I hereby issue a monetary order in favour of the tenant for \$815.00. This order must be served on the respondent and may be filed in the Supreme Court, (Small Claims), and enforced as an order of that Court.

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

Conclusion

The landlord is partly successful in the application and is granted an order to retain the amount from the tenant's security deposit, the remainder of which was granted to the tenant in a Monetary Order.

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 24, 2013

Residential Tenancy Branch

