



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding GRAND ELEPHANT ENTERPRISES LTD.
and [tenant name suppressed to protect privacy]

Decision

Dispute Codes:

MNR, MND, MNR, MNSD, OPR, OPB, FF, CNR, ERP, LRE, OLC, PSF, RP, O

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord for an Order of Possession and a monetary order based on a 10-Day Notice to End Tenancy for Unpaid Rent dated August 2, 2014. The landlord also seeks compensation for cleaning and damages.

The hearing was also convened to deal with an application by the tenant seeking an order to cancel the Ten Day Notice to End Tenancy for Unpaid Rent an order for repairs and emergency repairs, an order to force the landlord to comply with the Act and provide services and facilities required by law, an order restricting the landlord's access and monetary compensation.

The landlord was in attendance. Although the tenant was aware of the date scheduled to hear their application and was also served with the landlord's Application for Dispute Resolution and Notice of Hearing, nobody for the tenant appeared.

At the outset of the hearing the landlord testified that the tenant had vacated the rental unit on August 27, 2014. Therefore the portion of the tenant's application requesting to cancel the Notice and the portion of the landlord's application requesting an Order of Possession, are both moot and need not be determined. The portion of the tenant's application seeking orders for repairs, to provide services and facilities required by law, to restrict the landlord's access and to compel the landlord to comply with the Act are also moot as the tenant has moved out of the rental unit.

The remaining claims of both parties seeking monetary compensation will be heard.

As the tenant did not appear to present their evidence, the tenant's application and monetary claim is dismissed in its entirety without leave to reapply.

Issue(s) to be Decided

The remaining issues to be determined based on the testimony and the evidence are:

Is the landlord entitled to monetary compensation for rental arrears owed?

Is the landlord entitled to compensation for cleaning and damage to the unit?

Background and Evidence

Submitted into evidence was a copy of the 10-Day Notice to End Tenancy dated August 2, 2014 for rental arrears of \$1,050.00, which was posted on the tenant's door. A posted Notice is deemed served in 3 days.

Also in evidence were copies of communications, copies of the move-in and move-out condition inspection reports, photos, estimates, a copy of the tenancy agreement, and proof of service.

The landlord testified that the tenancy began June 1, 2014, at which time the tenant paid a security deposit of \$525.00. The landlord testified that the tenant failed to pay \$1,050.00 rent owed for the month of August and was issued with a Ten Day Notice to End Tenancy for Unpaid Rent.

The landlord testified that the tenant did not pay the arrears and vacated the unit leaving the unit dirty and damaged.

The landlord is claiming:

- \$2,352.46 for new shower doors supported by an estimate for cost and labour,
- \$347.41 damaged 5-drawer chest supported by a store advertisement,
- \$75.00 cleaning fee,
- \$12.55 mailing costs,
- \$50.00 reimbursement for the cost of the application.

The landlord testified that the shower doors are approximately 10 years old and the dresser is around 3 years old. The landlord submitted photos of the doors, dresser and other areas of the unit.

Analysis

Based on the testimony of the landlord, I find that the tenant was served with a Notice to End Tenancy for Unpaid Rent and has not paid the outstanding rent. I find that the landlord is entitled to compensation of \$1,050.00 for rental arrears.

With respect to the landlord's claim for costs of cleaning and repairs, section 7 of the Act states that if a landlord or tenant does not comply with the Act, the regulations or the tenancy agreement, the non-complying party must compensate the other for damage or

loss that results. Section 67 of the Act grants an Arbitrator the authority to determine the amount and to order payment under these circumstances. The claim must meet all elements of the test below.

Test For Damage and Loss Claims

- Proof that the damage or loss exists,
- Proof that this damage or loss happened solely because of the Respondent's violation of the Act or agreement,
- Verification of the actual amount required to compensate for the claimed loss or to rectify the damage,
- Proof that the claimant followed section 7(2) of the Act by taking reasonable steps to minimize the loss or damage.

In regard to the claim for damaged shower doors, I find that section 32 of the Act requires that a tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant. However, a tenant is not required to make repairs for reasonable wear and tear. 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. Items and finishes have a limited useful life and this is recognized in the Residential Tenancy Policy Guidelines.

Given the age of the doors, I find that they likely reached the end of their useful life. Therefore I find that the landlord's claim for the cost of replacement shower doors must be dismissed.

In regard to the damaged 5-drawer chest, I find that no evidence was submitted or presented by the landlord to prove that the landlord attempted to mitigate the loss by trying to repair the dresser. Therefore I find that this claim does not satisfy element 4 of the test for damages. For this reason, I find that the claim for the estimated cost of replacing the dresser must be dismissed.

In regard to the claim for 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. Based on the contents of the move-out condition inspection report, I find that the rental unit was left in a reasonably clean condition in compliance with the Act. Therefore, I find that the landlord's claim for \$75.00 in cleaning costs fails to satisfy the test for damages.

In regard to the landlord's claim of \$12.55 for mailing costs, I find that, with the exception of the cost of filing the application, 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. I grant the landlord monetary compensation for the \$50.00 cost of the application.

I find that the landlord has established a total monetary claim of \$1,100.00 comprised of \$1,050.00 accrued rental arrears and the \$50.00 fee paid by the landlord for this application. I order that the landlord retain the security deposit of \$525.00 in partial satisfaction of the claim leaving a balance due of \$575.00.

I hereby grant the Landlord an order under section 67 for \$575.00. 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.

The tenant's application is hereby dismissed in its entirety without leave to reapply.

Conclusion

The tenant's application is dismissed in its entirety as the tenant did not attend. The landlord is partly successful in the cross application and is granted a monetary order for rental arrears.

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 06, 2014

Residential Tenancy Branch

