



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards
Ministry of Housing and Social Development

Decision

Dispute Codes: MNDC, O

Introduction

This hearing dealt with the tenant's application for a Monetary Order for damage or loss under the Act, regulation or tenancy agreement and return of the security deposit. Both parties appeared at the hearing and had an opportunity to be heard. Both parties confirmed that they provided the other party with copies of the evidence they intended to rely upon for the proceeding.

Issue(s) to be Decided

1. Whether the landlord has retained the security deposit and had a legal right to do so.
2. Whether the tenant's claim for damages or loss has already been dealt with during a previous dispute resolution preceding.
3. Jurisdiction to hear the tenant's claims for damages or loss under the Act, regulation or tenancy agreement.

Background and Evidence

Upon the evidence before me I make the following findings with respect to the tenancy.

The tenant began residing in the rental unit September 5, 2001. The tenant paid a security deposit of \$187.50 on that same day. The landlord and tenant did not conduct a move-in inspection together. The tenant was provided with an inspection report prepared by the landlord approximately 8 months after the tenancy began. The tenancy ended March 31, 2008 following a dispute resolution proceeding held February 4, 2008 (file 709943); however, the tenant did not vacate until April 12, 2008 when the baliff enforced a Writ of Possession obtained by the landlord.

The parties were in agreement that the tenant has not been refunded his security deposit, plus accrued interest, and that the tenant had not authorized the landlord to retain any part of the security deposit in writing. The parties were in agreement that the tenant provided the landlord with a letter dated April 12, 2008 that instructed the landlord to send the security deposit to the tenant at the address of the rental unit. The tenant claims that he was still able to retrieve his mail using the rental unit address and used it because he was homeless after being evicted. The agent claims that the address was not valid as the tenant had been evicted from that address. The tenant could not confirm that the tenant providing the landlord with any other forwarding address, in writing, until the tenant made this application for dispute resolution sent to the landlord by registered mail on July 29, 2008

The agent also explained that the security deposit was not returned because the tenant had failed to pay rent for the last two months he resided in the rental unit, the tenant damaged the rental unit, and the landlord had incurred costs to enforce the Writ of Possession.

With respect to the tenant's claim for damage to his reputation, the tenant testified that the landlord had made allegations at previous dispute resolution proceedings that were not supported by evidence and those allegations lead to the tenancy ending and the tenant becoming homeless. The tenant also testified that the landlord had told people that the tenant was growing marijuana. Although the tenant stated he was growing marijuana, the tenant claimed that the landlord telling other people put the tenant at risk for theft and potential difficulty in finding future rental accommodation

The agent testified that the landlord is an elderly man who does not get out very much and that the only persons told of the marijuana grow operation was the strata counsel that was involved in dealing with the moisture problems either caused by a roof leak or

condensation from the marijuana grow operation. The landlord also provided copies of several previous dispute resolution proceedings. The decisions show that

- The tenancy ended by mutual agreement and that tenant's claims for "losses" against the landlord were withdrawn as part of the mutual agreement;
- A previous claim for compensation for "potential loss" and moving costs were found to be res judicata;
- The tenant's submission concerning false allegations by the landlord were already addressed in a review decision
- A previous attempt to have the security deposit returned was made prematurely.

Analysis

I find the landlord did not have the legal right to retain the tenant's security deposit as the landlord extinguished his right to retain the deposit for damages by failing to fulfill his obligations with respect to the move-in inspection and the report. I also find that the landlord had not received an order with respect to the unpaid rent prior to the tenancy ending, thus the landlord did not have the right to retain the security deposit for unpaid rent. Therefore, once the landlord received the tenant's forwarding address, in writing, the landlord had to do one of two things in order to comply with the Act: either repay the deposit or apply to retain it through the dispute resolution process.

I make no finding as to whether the address of the rental unit constitutes a forwarding address as I have found that the tenant provided the landlord with a forwarding address, other than the address of the rental unit, in writing by way of making this application for dispute resolution. The application was sent to the landlord on July 29, 2008 by registered mail; therefore, the landlord was deemed to have received it five days later. As the landlord did not make an application for dispute resolution or repay the tenant the security deposit, I must find that the landlord violated section 38(1) of the Act. Where a landlord violates section 38(1) of the Act, section 38(6) provides that the

landlord must pay the tenant double the security deposit. Accordingly, the tenant is awarded double the security deposit, plus accrued interest, in the amount of \$382.75.

As explained to the parties at the hearing, the landlord is at liberty to file an application for dispute resolution if the landlord wishes to pursue a claim for unpaid rent, damages and other costs within two years of the tenancy ending.

With respect to the tenant's claim for compensation for a damaged reputation, I make no finding as to whether there was a loss to the tenant as I find that any loss that may have occurred during the tenancy have already been decided in the appropriate forum and the issue is *res judicata*.

With respect to the tenant's claims for damages that the tenant allegedly suffered after the tenancy ended, I find that I do not have jurisdiction to hear the claim. The jurisdiction I have been conferred to resolve disputes between landlords and tenants is the authority conferred upon me by the Act; however, this does not confer the authority to hear all disputes regarding every type of dispute between two or more parties that may have been in a tenancy relationship at one time. The Act does not provide for compensation for a damaged reputation expressly. The Act does provide for compensation where the landlord breaches the tenant's right to quiet enjoyment of the rental unit. However, I can not find a breach of quiet enjoyment of the rental unit for periods of time when the tenant was no longer possession of the rental unit and the landlord had legally regained possession of the rental unit. Therefore, I decline jurisdiction to make any finding concerning the allegedly damaged reputation after the tenancy ended or other losses that may have been incurred from the tenancy ending in a manner than that has already been decided.

In recognition of the award I made to the tenant with respect to the security deposit, I enclose a Monetary Order with this decision for the tenant. The tenant must serve the

Monetary Order upon the landlord and may file it in Provincial Court (Small Claims) to enforce as an Order of that court.

Conclusion

The tenant is provided a Monetary Order in the amount of \$382.75 for the landlord's failure to administer the security deposit in accordance with the Act. The tenant's claim for compensation for damage or loss under the Act, regulation or tenancy agreement is dismissed without leave.

September 26, 2008

Date of Decision
