



Dispute Resolution Services

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

Decision

Dispute Codes: MNSD, MNR, FF

Introduction

This hearing was scheduled for August 7, 2008 to hear the cross-applications filed by the tenant and landlord. The tenant was requesting a Monetary Order for double the security deposit. The landlord was requesting a Monetary Order for unpaid rent, damages to the rental unit, to retain the security deposit and recovery of the filing fee paid for this application. On August 7, 2008, all parties attended the hearing and testimony was received from all parties. The hearing was adjourned in order to provide the landlord the opportunity to provide additional evidence concerning damages and the tenant the opportunity to provide evidence showing he paid rent for the month of June 2008. The parties were notified of the date and time of the reconvened hearing by way of mail sent to the parties at the addresses confirmed to be correct by the parties.

The hearing reconvened on September 9, 2008; however, only the landlord was represented. The landlord had submitted evidence to the Residential Tenancy Branch prior to the September 9, 2008 hearing and the landlord was able to provide evidence that its evidence of damages to the rental unit was sent to the tenant by registered mail. A search of the registered mail tracking number showed that delivery was attempted by Canada Post but that the tenant did not pick up the evidence. I am satisfied that the landlord delivered its evidence to the tenant and the Residential Tenancy Branch in accordance with the Act and I accepted the evidence.

There was no documentary evidence provided by the tenant prior to the September 9, 2008 hearing with respect to payment of rent for June 2008.

Issue(s) to be Decided

Whether the tenant is entitled to return of double his security deposit.

Whether the landlord is entitled to compensation for unpaid rent and damages to the rental unit.

Whether the landlord will be awarded the costs of the filing fee for this application.

Background and Evidence

Upon review of the evidence, I make the following findings concerning the tenancy. The tenancy commenced January 2008. Rent for the furnished rental unit was payable on the 1st day of every month in the amount of \$425.00. A security deposit of \$212.50 was collected from the tenant January 1, 2008. The tenant vacated the rental unit June 1, 2008, without notice, and was staying in another room in the building, rented to another tenant, until June 10, 2008.

The parties were in dispute as to whether rent was paid for June 2008. The tenant was advised to provide documentary evidence of payment prior to the reconvened hearing; however, documentation was not received.

The tenant testified that he gave the building manager a letter advising the landlord of his forwarding address on June 10, 2008. The manager acknowledged receiving the letter but disputed that he received the letter as stated by the tenant. Rather, the manager testified that he found the letter in the office that is accessible to tenants by way of an open window in the hallway. The manager explained that there is also a desk clerk available to tenants that wish to deliver documents to the landlord and that tenants are not explicitly instructed to deliver documents through the open window in the office. The manager testified that he received the tenant's letter dated June 10, 2008 sometime in June 2008 although the exact date could not be provided.

The landlord submitted testimony and photographic evidence depicting two panes of glass broken in the rental unit window, a hole in the wall, broken furniture, abandoned personal property belonging to the tenant and garbage left behind in the rental unit. The landlord testified that the photographs were taken between June 10 and 15, 2008. By way of the landlord's application the landlord was seeking a Monetary Order for \$637.50 which is comprised of unpaid rent and the security deposit added together. Upon further enquiry at the hearing, the landlord provided additional testimony that approximately \$173.00 was spent to repair the window glass, approximately \$20.00 was spent to repair the hole in the wall and \$150.00 to clean the rental unit, plus time spent carpet cleaning and repairing the furniture. The hole and furniture repairs and the cleaning was done by the manager himself, which took several days. The landlord's evidence included a move-in inspection report signed by both the landlord and tenant. The move-out inspection report was signed by the landlord only as it was the landlord's testimony that the landlord did not know where to reach the tenant in order to offer the tenant the opportunity to conduct the move-out inspection together.

The landlord testified that the personal property of the tenant was boxed up until such time the tenant informed the landlord he did not want the property. The landlord then disposed of the property and testified that the property was of little or no value.

Analysis

Tenant's application

Section 38(6) provides that the tenant is entitled to return of double his security deposit if the landlord does not comply with section 38(1) of the Act. In order to determine the landlord did not comply with section 38(1) the tenant must prove to me that, based on a balance of probabilities, the landlord received the tenant's forwarding address, in writing, more than 15 days before the landlord filed its application for dispute resolution. All documents, except certain documents, that must be given to another party must be

given in one of the ways specified in section 88 of the Act. With respect to giving documents to a landlord, the tenant may either:

- Leave a copy with the landlord, or an agent of the landlord,
- Send by mail to the address at which the landlord carries on business as a landlord,
- Leave a copy in the mail box or mail slot at the address at which the person carries on business as a landlord,
- Leave a copy attached to a door or other conspicuous place at the address at which the person carries on business as a landlord,
- Send by fax to the number provided as an address for service, or
- As ordered by the director or prescribed in the regulations.

As the tenant and landlord were in disagreement as to how and when the forwarding address was provided to the landlord, I do not find that the tenant provided sufficient evidence to satisfy me that his forwarding address was provided to the landlord in one of the ways required by the Act or the date on which it was received.

It is not in dispute that the tenant's application for dispute resolution was received by the landlord on June 30, 2008 and it included the tenant's new address. Therefore, I find sufficient evidence to conclude that the tenant's forwarding address was provided to the landlord, in writing, on June 30, 2008.

Since the landlord applied to retain the security deposit on July 8, 2008, which is less than 15 days after June 30, 2008, I do not find that the landlord violated section 38(1) of the Act. Therefore, the tenant has not established that he is entitled to return of double his security deposit.

The disposition of the tenant's security deposit of \$212.50 plus applicable interest is address below.

Landlord's application

I am satisfied that the landlord was entitled to rent for the month of June 2008 in accordance with the provisions of the Act. As the tenant did not substantiate that he paid rent for June 2008, I award the landlord \$425.00 for unpaid rent by way of a Monetary Order enclosed for the landlord with this decision. The landlord must serve the Monetary Order upon the tenant and may enforce it in Provincial Court (Small Claims) as an Order of that court.

The landlord has failed to substantiate the costs of the window replacement; however, upon consideration of the photographic evidence, the inspection reports and the landlord's testimony I am satisfied that the landlord spent a considerable amount of time cleaning and repairing the rental unit, including the furniture. The landlord has satisfied me that the time spent by the manager to clean and repair the rental unit exceeded the amount of security deposit. The landlord is authorized to retain the tenant's security deposit and accrued interest in satisfaction of the damages to the rental unit caused by the tenant.

The parties are responsible for their own filing fees and I make no award to the landlord with respect to the filing fee paid for their application for dispute resolution.

Conclusion

The landlord is provided with a Monetary Order for unpaid rent in the amount of \$425.00. The landlord is authorized to retain the tenant's security deposit and interest in satisfaction of the damages caused to the rental unit.

September 9, 2008

Date of Decision
