



Dispute Resolution Services

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

Decision

Dispute Codes:

MNDC	Money Owed or Compensation for Damage or Loss
MNSD	Monetary Order for the Return of the Security Deposit and Pet Damage Deposit
FF	Recover the Filing Fee for this Application from the Respondent

Introduction

This Dispute Resolution hearing was convened to deal with an Application by the tenant for an order for the return of the security deposit and the pet damage deposit retained by the landlord and a monetary order for money owed or compensation for damage or loss under the Act.

The tenant and the Landlord appeared and each gave affirmed testimony in turn.

Issue(s) to be Decided

The tenant was seeking to receive a monetary order for the return of the security deposit, and compensation for wrongful eviction without proper notice.

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

- Whether the tenant is entitled to the return of the security and pet damage deposit pursuant to section 38 of the Act. This determination is dependant upon the following:
 - Did the tenant pay a security deposit and pet damage deposit?

- Did the tenant furnish a forwarding address in writing to the landlord?
- Did the tenant provide written consent to the landlord permitting the landlord to retain the security deposit at the end of the tenancy?
- Did the landlord make an application for dispute resolution and obtain an order permitting the landlord to retain the deposit?
- Whether the tenant is entitled to monetary compensation under section 67 of the *Act* for damages or loss. This determination is dependant upon answers to the following questions:
 - Has the tenant submitted proof of the existence and monetary amount of the damage or loss?
 - Has the tenant submitted proof that the damage or loss was caused by the respondent through a violation of the *Act* by the respondent?

The burden of proof is on the applicant.

Background and Evidence

The tenant submitted into evidence, and claims listed which included, Filing fee \$50.00, double the damage deposit \$1,500.00 and reimbursement of two month's rent \$3,000.00. Also submitted into evidence was the fixed term tenancy agreement beginning on June 28, 2008 and expiring on August 31, 2008 that specified the rental rate, confirmed payment of \$750.00 security deposit, and included hydro, water, gas, cable basic phone and internet. The tenant also agreed to care

The tenant readily admitted that she defaulted on the rent and failed to comply with the *Act* and included proof of registered mail sent, a copy of the tenancy agreement, and a written chronology of the events from the tenant's perspective. The tenant admitted that the rent was not paid in full. However, the tenant's position is that the landlord did not

follow due process to deal with the alleged breaches and used bullying tactics to end the tenancy early.

The landlord gave testimony regarding the tenant's failure to pay rent due and regarding numerous alleged violations of the tenancy agreement perpetrated by the tenant. The landlord was under the wrong impression that the security deposit could be retained to compensate for the landlord's losses and damages, and stated that the landlord did not realize that under section 38, the landlord must apply for an order to keep the deposit within 15 days of receiving the forwarding address of the tenant.

Analysis

Claim for Damages and Loss

In regards to an Applicant's right to claim damages from the another party, Section 7 of the Act states that if a tenant or landlord does not comply with this Act, the regulations or their tenancy agreement, the non-complying tenant or landlord 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 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, 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.
4. Proof that the claimant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage

In this instance, the burden of proof is on the claimant, that being the tenant, to prove the existence of the damage/loss and that it stemmed directly from a violation of the agreement or a contravention of the Act on the part of the landlord. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. Finally it must be proven that the claimant did everything possible to address the situation and to mitigate the damage or losses that were incurred

Based on the testimony of the tenant, while I find that the landlord did not follow the Act in ending the tenancy properly, I also note that the tenant was not in compliance with section 26 of the Act by ensuring that the tenant paid rent when rent was due. The tenant admitted that rent is owed. I find that the tenant is not entitled to a windfall created by virtue of the fact that the tenant left of her own volition before the landlord could obtain a valid and enforceable Ten-Day Notice under section 46 and apply for an order to end the tenancy. Accordingly, I dismiss the portion of the tenant's application relating to the request for a monetary order of two months rent as compensation for damages.

Security and Pet Damage Deposit

In regards to the return of the security deposit and pet damage deposit, I find that section 38 of the Act is clear on this issue. Within 15 days after the later of the day the tenancy ends, and the date the landlord receives the tenant's forwarding address in

writing, the landlord must either repay the security deposit or pet damage deposit to the tenant with interest or make an application for dispute resolution claiming against the security deposit or pet damage deposit.

The Act states that the landlord can only retain a deposit if the tenant agrees in writing the landlord can keep the deposit to satisfy a liability or obligation of the tenant, or if, after the end of the tenancy, the director orders that the landlord may retain the amount.

I find that the tenant did not give the landlord written permission to keep the deposits, nor did the landlord make application for an order to keep the deposits.

Section 38(6) provides that If a landlord does not comply with the Act by refunding the deposit owed or making application to retain it within 15 days, the landlord may not make a claim against the security deposit or any pet damage deposit, and must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable. Accordingly I find that the tenant is entitled to be paid double the security deposit of \$1,500.00 plus interest of \$4.00 on the original deposit.

Conclusion

Based on the testimony and evidence presented during these proceedings, I find that the tenant is entitled to compensation of \$1,554.00 comprised of \$1,500.00 for double the security deposit, interest of \$4.00 and the \$50.00 fee paid by the tenant for this application. 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 remainder of the tenant's application is dismissed without leave.

October 16, 2008

Date of Decision