



Dispute Resolution Services

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

DECISION AND REASONS

Dispute Codes: *MNDC, MNSD.*

Introduction

This hearing dealt with an application by the tenant pursuant to the *Residential Tenancy Act* for orders as follows:

- A monetary order for moving costs and the return of rent pursuant to Section 67.
- A monetary order for the return of the security deposit pursuant to Section 38;

Both parties attended the hearing and were given full opportunity to present evidence and make submissions. On the basis of the solemnly affirmed evidence presented at the hearing, a decision has been reached.

Issues to be decided

Is the tenant entitled to a monetary order for the return of rent paid for the month of December 2006? Is the tenant entitled to the return of the security deposit? This is contingent on the determination of whether the tenant paid a security deposit.

Background and Evidence

The tenant testified that on November 12, 2006, the tenant and landlord entered into a tenancy agreement and the tenant paid a security deposit of \$250.00 and rent for December 2006, in the amount of \$500.00. The tenant stated that the tenancy began on December 01, 2006 and ended on December 04, 2006 when the landlord allegedly assaulted the tenant. The tenant has submitted into evidence a copy a thread of two emails. In one email dated October 16, 2007, from the tenant to the landlord, the tenant states that the tenant paid a security deposit and rent for December 2006 on December 01, 2006 and is requesting that the landlord return this amount to the tenant along with \$450.00 for moving costs. The note also provides a forwarding address.

The other email dated October 20, 2007, from the landlord to the tenant states that the landlord does not owe the tenant any money. During the hearing the tenant stated that

there was a written tenancy agreement and a receipt for the security deposit, but did not submit any evidence to support this claim.

The landlord stated that the tenancy began on October 10, 2006 and the tenant did not pay any rent for October nor did the tenant pay a security deposit. The landlord stated that the tenant paid rent for November and December and moved out on December 04, 2006 without notice and without providing the landlord with a forwarding address. The landlord denied that the landlord assaulted the tenant and stated that the tenant had attacked the landlord with a bag of onions. The landlord also stated that the tenant had not provided the landlord with any evidence prior to the hearing, but commented that the email that the tenant had submitted as evidence was doctored by the tenant.

Analysis

It is important for the claimant to know that to 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

- Proof that the damage or loss exists,
- Proof that this damage or loss happened solely because of the actions or neglect of the Respondent in 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 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 Tenant.

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.

I find that the tenant's claim for compensation under the Act does not meet all the components of the above test. The tenant did not submit any verification of a tenancy agreement or a security deposit. The landlord denies having received a security deposit. When contradicting verbal evidence is given by both parties, the burden of proof is on the claimant to provide evidence to support the claim. The only evidence that the tenant has submitted is a copy of a thread of two emails. I note that the dates of the emails are not in keeping with the direction of the thread. From the evidence submitted by the tenant and the contradictory verbal evidence given by the landlord, I am unable to determine that a security deposit was paid by the tenant. Hence the tenant's claim for the return of the security deposit is dismissed.

The tenant submitted evidence after the hearing which included a tenancy agreement. Having reviewed this tenancy agreement, I find that the dates are not in keeping with the tenant's verbal sworn testimony. Regarding the tenant's claim for the return of rent for December 2006, I find that the tenant moved out without notice and hence is not entitled to the return of rent for December 2006. The tenant has also not provided any evidence to support her claim for moving costs; hence this portion of her claim is dismissed.

Conclusion

I find that the tenant has not proven the tenant's case and therefore this application is dismissed in its entirety.

Dated January 21, 2009.

Dispute Resolution Officer