

Dispute Resolution Services

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

DECISION AND REASONS

Dispute Codes: *MNSD, MNR, FF.*

Introduction

This hearing dealt with applications by the tenant and the landlord, pursuant to the *Residential Tenancy Act*.

The tenant applied for a monetary order for the return of double the security deposit pursuant to section 38. The landlord applied for a monetary order pursuant to section 67, for loss of income for the month of May 2007, due to the condition of the rental unit at the end of the tenancy. The landlord also applied to recover the cost of filing the Application for Arbitration pursuant to section 72.

The tenancy began on October 01, 2006. The rent was \$1850.00 and on September 11, 2006, the tenant paid a security deposit of \$925.00 and a pet deposit of \$500.00. The tenant also stated that he had paid a refundable fee of \$100.00 as a deposit for keys and a garage opener.

Prior to this hearing on March 12, 2009, there have been three applications for dispute resolution at this dispute address.

1. On April 17, 2007, on File No. 195968, the landlord applied for an order of possession and a monetary order for damages. The parties reached a mutual agreement to end the tenancy on April 30, 2007. Since the tenant was still in occupation of the rental unit, it was determined that the landlord's application for damages was premature and this portion of the landlord's application was dismissed with leave to reapply.

2. On May 25, 2007, on File No. 198891, the tenant applied for the return of double the security and pet deposits and the refundable fee. This matter was heard on July 17, 2007. The landlord did not attend and the tenant was awarded the full amount that the tenant had applied for.

3. On January 13, 2009, the landlord applied for review of the above decision that awarded the tenant the return of double the security and pet deposits. This matter was heard on February 02, 2009 and the dispute resolution officer determined that that the landlord was entitled to a new hearing and ordered that the decision and order dated July 17, 2007 be suspended until such time that a new hearing is conducted.

I conducted this new hearing on this date (March 12, 2009) along with a cross application filed by the landlord. Both parties attended the hearing and were given full opportunity to present evidence and make submissions.

Issues to be decided

Did the tenant provide the landlord with a forwarding address in writing in a timely manner? Is the landlord entitled to a monetary order for loss of income for the month of May 2007 while the rental unit was being repaired? Is the landlord entitled to the recovery of the filing fee?

Background and Evidence

Tenant's application

The tenant moved out on April 30, 2007. On July 17, 2007 the tenant's application for the return of double the security deposit was heard. During that hearing, the tenant stated that he had provided the landlord with a forwarding address during the prior dispute resolution hearing on April 18, 2008. I reviewed this decision and it makes no mention of a forwarding address as it consisted of the landlord's application to end tenancy, retain the security deposit and recover the filing fee.

During the hearing on March 12, 2009, the tenant testified that on April 30, 2007, an advocate assisted the tenant during the move out and also conducted the move out inspection of the rental unit on behalf of the tenant.

The tenant stated that the forwarding address was given to the landlord by way of the advocate's business card. The tenant agreed that the address on the card was a drop-in centre. The tenant testified that the landlord had physically assaulted the tenant in the past and therefore the tenant did not want to provide the landlord with an address that the tenant would be residing at, as the tenant feared for his own safety.

The tenant stated that having given the landlord a forwarding address by way of the advocate's business card, the landlord did not return the security and pet deposits within 15 days of receiving the forwarding address and therefore the tenant was entitled to double the security and pet deposits.

Landlord's application

The landlord testified that on the move out day (April 30, 2007), the landlord arrived at the rental unit at 1:00 p.m. to find the tenant waving a bat in an aggressive manner.

The landlord stated that he is 77 years old, physically frail and had been pushed to the ground on a previous occasion by the tenant. Therefore, the landlord feared for his own safety and called for police protection.

The landlord stated that the tenant refused three requests to enter the unit to conduct a move out inspection. The tenant advised the landlord that the advocate would represent him at the inspection. The landlord stated that the advocate entered the unit, but the move out inspection was not conducted with the advocate.

The landlord submitted into evidence a copy of the business card of the advocate. The landlord stated that the advocate just offered the card to the landlord and did not mention that it was the forwarding address of the tenant.

The landlord wanted to apply to retain the security deposit in partial satisfaction of the damage caused to the unit and to apply for additional costs incurred to fix the unit. The landlord stated that since the tenant did not provide the landlord with a forwarding address, the landlord attempted to call the advocate to find out the tenant's new address.

However, when the landlord called the number on the advocate's card, the person who received the landlord's call advised the landlord that the address was a drop-in center that serviced 1000 members and 500 volunteers. The landlord was also advised that the tenant could not be contacted by mail at this address.

The landlord continued to search for the tenant and the tenant's address and was successful in finding the tenant's address on January 10, 2009, through Canada Post. On January 13, 2009, the landlord made an application to claim damages to the rental unit and hired a process server to serve the notice of hearing to the address on the advocate's card and to the residential address that the landlord had found through Canada Post.

The landlord stated that the unit was not in a condition to be re rented at the end of the tenancy and the landlord suffered a loss of income for the month of May 2007 while the suite was undergoing repairs. The landlord is making a claim for \$1,850.00 for loss of income, \$51.94 for advertising and \$50 for the filing fee for a total of \$1,951.94.

Analysis

Tenant's application:

Section 39 of the *Residential Tenancy Act*, states that if a tenant does not give a landlord a forwarding address in writing within one year after the end of the tenancy, the landlord may keep the security and pet deposits and the right of the tenant to the return of the deposits is extinguished.

The tenant stated that the address on the advocate's card served as a forwarding address. However, when the landlord called the phone number on the card, he determined that the address was that of a drop-in center.

The landlord made several attempts to locate the tenant without success as the landlord wanted to file an application to recover costs to repair the suite and for loss of income while the repairs were being done. Moreover, the tenant stated that he has moved out of the address that the landlord found through Canada Post and refused to provide a current address. The tenant advised me to mail this decision to the drop-in center.

Based on the sworn testimony of both parties, I find that the tenant did not provide the landlord with a forwarding address in writing within one year of the end of the tenancy and pursuant to section 39 of the *Act*; the tenant is not entitled to the return of the security and pet deposits.

During the hearing on July 17, 2007, the tenant stated that he had returned all the keys and a garage remote control to the landlord. The tenant had submitted into evidence prior to that hearing two receipts which indicate that the tenant had paid two deposits of \$50.00 each for door keys and a garage opener. Therefore, I find that the tenant has established an entitlement for \$100.00 for reimbursement of the deposits he had paid to the landlord for the keys and garage remote control opener.

Landlord's application

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
- 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, the landlord, 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 other party. 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.

Other than a receipt for repairs done on March 08, 2007 (during the tenancy) and a receipt for advertising the availability of the suite for May 2007, the landlord did not submit any evidence to support his claim that the damage to the suite happened solely because of the actions or neglect of the tenants nor did the landlord submit receipts for repairs done during the month of May 2007 or verification that the suite was vacant for that month.

I find that the landlord's claim for loss of income does not meet all the components of the above test and is therefore dismissed. Since the landlord has not proven his case, the landlord must bear the cost of filing this application.

Conclusion

The landlord has not established a claim for loss of income, advertising and the filing fee. The tenant has established a claim in the amount of \$100.00.

I grant the tenant under Section 67 of the *Residential Tenancy Act*, a monetary order in the amount of **\$100.00**. This order may be filed in the Small Claims Court and enforced as an order of that Court.

Dated March 20, 2009.

Dispute Resolution Officer