

Dispute Resolution Services

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

DECISION AND REASONS

Dispute Codes: *CNR, MNDC, OLC, ERP, RP, LRE, AS, RR, DRI, PSF.*

Introduction

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

- an order to cancel the notice to end tenancy for unpaid rent, pursuant to section 46;
- compensation for damage or loss under the *Act*, pursuant to section 67;
- an order that the landlord comply with the *Act*, pursuant to section 62;
- an order that the landlord make repairs and emergency repairs and provide services, pursuant to sections 32 and 65;
- an order setting conditions on the landlord's right to enter the rental unit, pursuant to section 70;
- permission to sublet and reduce rent, pursuant to section 65;
- a dispute regarding a rent increase, pursuant to section 43.

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.

At the start of the hearing the tenant stated that he had moved out of the unit on February 15, 2009 and was therefore withdrawing his application for everything except for a monetary order for compensation.

Issues

Is the tenant entitled to compensation in the amount of \$3,500.00?

Background and Evidence

Based on the sworn testimony of both parties, the facts are as follows:

The tenancy started on December 15, 2008 for a fixed term ending August 31, 2009.

The landlord entered into a written agreement with the tenant and a co tenant. The monthly rent was \$1,300.00 payable on the first day of each month, and the tenant paid a security deposit of \$650.00 at the start of the tenancy.

On January 18, 2009 the tenant and co tenant got into an altercation and the co tenant moved out on January 19, 2009. The landlord released the co tenant from the fixed term lease and offered to release the tenant as well, if the tenant was unable to pay the full amount of the rent. The tenant decided to stay.

However for February 2009, the tenant paid partial rent in the amount of \$800.00. The landlord served the tenant with a ten day notice to end tenancy for non payment of rent. The tenant moved out on February 15, 2009 and the unit was not re rented until April 01, 2009.

The tenant testified that he moved out at the landlord's request and that the landlord had promised to return part of the rent that the tenant had paid for February. The tenant stated that the tenant used the landlord's truck to move his belongings and the landlord charged him for use of the truck without any prior arrangement.

Initially, the tenant stated that the landlord did not return any money that he had promised the tenant; but later during the hearing, the tenant stated that the landlord had returned \$650.00 in cash to the tenant.

The tenant has applied for compensation in the amount of \$3,500.00 for inconvenience endured during the move and for the lack of phone and internet connections in the rental unit. This amount includes \$800.00 for the cost of moving, \$200.00 for the cost of setting up the phone and internet services and \$2,500.00 for the cost of finding a new place and having friends assist the tenant with the move.

The tenant has not submitted any evidence to support this claim other than a doctor's note which states "*stress related to living conditions, chronic medical issues, not tolerating stress. Needs move*"

The landlord testified that he assisted the co tenant after the altercation with the tenant, by releasing the co tenant from the lease. The landlord stated that the tenant wanted to continue to occupy the rental unit, but would not pay the full rent of \$1,300.00. Therefore, the landlord offered to release the tenant from the lease which the tenant declined initially, but later agreed to move out on February 15, 2009. The landlord agreed to charge the tenant \$500.00 for rent for February. Since the tenant had already paid \$800.00, the landlord refunded \$300.00 of the rent to the tenant.

The landlord stated that the landlord returned a total of \$850.00 to the tenant and had a receipt to verify the amount paid back to the tenant, on the day the tenant moved out. The landlord stated that this amount represented the balance of the rent for February (\$300.00) and security deposit (\$650.00) paid by the tenant minus charges for the use of the landlord's truck (\$100.00).

Analysis

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 claimant 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 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.

I find that the tenant's claim for compensation does not meet all the components of the above test. The tenant did not submit any evidence to support his claim that the landlord violated the Act or the tenancy agreement, nor did the tenant submit any verification of the actual amount required to compensate for the claimed loss. Therefore I find that the tenant is not entitled to compensation under the Act.

Conclusion

As the applicant has not succeeded in meeting the burden of proof required to prove that monetary compensation is justified under the Act, the tenant's application for compensation of \$3,500.00 is dismissed without leave to re-apply.

Dated March 20, 2009.

Dispute Resolution Officer