



# Dispute Resolution Services

Residential Tenancy Branch  
Ministry of Housing and Social Development

## **DECISION**

### **Dispute Codes:**

MNSD

### **Introduction**

- 1) This hearing dealt with an Application for Dispute Resolution by the tenant seeking the following:
  - A Monetary Order for the return of the tenant's security deposit or rent paid
  - Compensation for damage or loss under the Act, for \$100.00 cleaning costs and \$80.00 for a tow truck;

### **Issue(s) to be Decided**

- Is the tenant entitled to a rent refund for the month of February?
- Has the tenant submitted proof that the claim for damages or loss is supported pursuant to *section 7* and *section 67* of the Act by establishing :
  - a) the loss was caused by the landlord through a violation of the Act
  - b) a verification of the actual costs to repair the damage
  - c) that the tenant did what ever is reasonable to mitigate the costs

### **Background and Evidence**

The Tenant testified that a verbal agreement was made for the tenant to move into the unit in January 2008. However, due to health problems suffered by the tenant, the parties agreed that the tenant could move into the unit starting in February 2008 and the

tenant paid \$600.00 rent for February. The tenant testified that, although a verbal agreement was made, no written tenancy agreement was signed. The tenant testified that the landlord requested a security deposit of \$300.00 but that no deposit was paid. The tenant found that she was unable to fully move into the unit because of a problem she encountered when she tried to remove her belongings from her current residence. The tenant's position is that because it was impossible for her to reside in the unit, including having no place to sit due to the lack of furnishings, then no tenancy had been established and therefore her \$600.00 rent paid for February should have been refunded in full.

In regards to the tenant's claim for the cleaning costs and the cost of the tow truck, the tenant testified that the landlord should reimburse the tenant for these being that the tenancy did not get established and the expenditures were incurred by the tenant.

The documentary evidence submitted by the tenant fully supported the tenant's testimony of the events that transpired.

### **Analysis**

The burden of proof is on the claimant to first establish and verify a claim for compensation. I find that, even if I accept all of the tenant's testimony to be absolute truth and even if I find as a fact that:

- The parties made a verbal agreement for the tenant to reside in the unit starting February 1, 2008.
- The tenant paid \$600.00 rent for the month of February 2008
- Due to circumstances beyond her control, the tenant was unable to fully move in and reside in the unit and was forced to leave in mid February;

I would still be unable to find that the claim for a rent refund in tenant's application could be granted under the Act. Testimony from the landlord was not required to be heard as

the tenant had a burden to make her case under the Act and did not succeed in doing so. Provisions of the Act were applied to the tenant's testimony as detailed below.

Section 1 of the Act contains a definition of "*tenancy agreement*" which includes an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a rental unit, use of common areas and services and facilities, and includes a licence to occupy a rental unit; (my emphasis)

The verbal agreement between these two parties meets the definition of a tenancy agreement. Once a tenancy has been established, and if there is no signed written agreement containing tenancy terms, then the standard terms and other provisions that are in the Act automatically apply.

Section 16 of the Act specifically states that the rights and obligations of a landlord and tenant under a tenancy agreement take effect from the date the tenancy agreement is entered into, whether or not the tenant ever occupies the rental unit.

In this instance, even if the tenant did not move in at all, a tenancy had been created and all of the rules in the Act would now be in force.

In regards to rent paid by the tenant, section 26 (1) provides that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement. In this situation, as of February 1, 2008, \$600.00 rent was due and payable. The tenant did not establish any reason supported by the Act as to why this would not apply in her situation.

The tenant's testimony and evidence conceded that the tenant did not live in the unit after mid February, despite having paid for the full month. There was no dispute of the fact that the tenant had ended the tenancy relationship with less than one month of notice to the landlord.

No determination need be made about the tenant's reasons for this and I do accept the tenant's testimony that she genuinely found it impossible to continue with the tenancy

because of some very compelling circumstances. Under the Act, a tenant can end a month-to-month tenancy for any reason, provided the tenant follows the provisions of the Act in doing so.

Section 45 (1) of the Act states that a tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that meets both criteria below:

- (a) is not earlier than one month after the date the landlord receives the notice,
- (b) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

Based only on the tenant's testimony and evidence, I have no choice but to find that the tenant did not comply with the above provision of the Act. A Notice to vacate must be in writing and if given anytime on or after February 1, 2008, would not be effective until the end of March 2008.

The issue of the return of the keys was not dealt with during the proceedings. However I feel it necessary to point out that the Act also gives some direction regarding what the tenant's responsibilities are upon vacating a unit. Section 37 (2) requires that, when a tenant vacates a rental unit, the tenant must (a) leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear, and (b) give the landlord all the keys or other means of access that are in the possession or control of the tenant and that allow access to and within the residential property.

Given all of the above, I find that there is nothing in the Act that supports the tenant's right to a rent refund under the circumstances that the tenant has described. I was able to determine this based solely upon the tenant's evidence and in the absence of any testimony by the landlord. Accordingly, I find that the portion of the tenant's application relating to the \$600.00 claim for rent paid, must be dismissed

The tenant has also claimed damages of \$100.00 for the cost of cleaning and \$80.00 for the cost of a tow truck.

Section 7 of the Act states that if a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant 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 resulting in costs or losses to the Applicant. 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 stemming directly from a violation of the agreement or a contravention of the Act on the part of the respondent. 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 mitigate the damage or losses that were incurred.

I find that the tenant has not succeeded in meeting the test for damages and losses to support the claim for compensation against the landlord. Even if the tenant successfully

proved that these expenditures were genuinely incurred, the tenant did not establish the criteria required for element 2 of the test by furnishing sufficient proof that the damages were caused by the landlord and in contravention of the Act. Therefore, I find that this portion of the tenant's application must also be dismissed.

### **Conclusion**

Given the testimony and evidence provided by the applicant in this dispute, I find that the tenant has not sufficiently established any entitlement for monetary compensation from the landlord and has not proven that there is or has been any violation of the Act or Regulation. Accordingly, the tenant's application is hereby dismissed in its entirety without leave to reapply.

April 2009

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Date of Decision

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Dispute Resolution Officer