

DECISION

Dispute Codes DRI MNSD RR
 MND MNDC FF

Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the tenant and landlord.

The tenant's application was filed on March 17, 2009 to dispute an additional rent increase, to request a Monetary Order for the return of double the security deposit, and allow the tenant to reduce rent for repairs services or facilities agreed upon but not provided.

The landlord's application was filed on April 20, 2009 to request a Monetary Order for damage to the unit, for money owed or compensation for damage or loss under the *Act*, and to recover the filing fee from the tenant.

Service of the hearing documents, by the tenant to the landlord, was done in accordance with section 89 of the *Act*, sent via registered mail on March 20, 2009. Mail receipt numbers were provided in the tenant's verbal testimony. The landlord was deemed to be served the hearing documents on March 25, 2009, the fifth day after they were mailed as per section 90(a) of the *Act*.

Service of the hearing documents, by the landlord to the tenant, was done in accordance with section 89 of the *Act*, sent via priority mail on April 20, 2009. Mail receipt numbers were provided in the landlord's documentary evidence. The tenant was deemed to be served the hearing documents on April 25, 2009, the fifth day after they were mailed as per section 90(a) of the *Act*.

Both the landlord and tenant appeared, acknowledged receipt of evidence submitted by the other, gave affirmed testimony, were provided the opportunity to present their evidence orally, in writing, in documentary form, and to cross exam each other.

All of the testimony and documentary evidence was carefully considered.

Preliminary Issue

The tenant appeared at the hearing and requested an adjournment for reasons that she didn't receive the landlord's hearing package until April 24, 2009 and that she has been ill. The tenant testified that she hasn't had enough time to respond to the landlord's evidence submitted on her application given her illness and that his application was not received by her five (5) days before the hearing.

The landlord testified that his evidence was served to the tenant, in person on April 19, 2009 and that it was the notice of his application for dispute resolution that was sent via priority mail on April 20, 2009. The tenant confirmed receipt of both the in-person and mail service. The tenant did state that the mail was sent to her current street address and not her mailing address which is a box number.

The tenant testified that she did not have a medical note to confirm her illness and that the illness prevented her from providing additional evidence, but that she has been ill for several months and that she could obtain a medical note if one was required.

The *Residential Tenancy Branch Rules of Procedure* stipulate that a notice to request a dispute resolution hearing must be sent to the respondent within three days of the application being filed with the Residential Tenancy Branch. In this case the applicant landlord's complied with the rules of procedure as they sent the hearing package on the same day they filed their application.

With respect to evidence received by all parties, the tenant testified to receiving the landlord's evidence on April 19, 2009 which meets the 5 day requirement. The couriered mail package was deemed to have been served on the tenant on April 25,

2009, three (3) days prior to the hearing. Section 3.5 of the *Residential Tenancy Branch Rules of Procedure* stated that if the time between filing the application and the date of the dispute resolution proceeding does not allow the five (5) day requirement to be met, then the evidence must be received by the respondent at least two (2) days before the dispute resolution proceeding.

Based on the foregoing I denied the tenant's request to adjourn the hearing and proceeded with hearing both applications.

Issues(s) to be Decided

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

1. Tenant's Application

- Whether the tenant is entitled to a Monetary Order for return of double the security deposit under section 38 of the *Residential Tenancy Act (Act)* and for a rent abatement for services or facilities agreed upon but not provided under section 67 of the *Act*

2. Landlord's Application

- Whether the landlord is entitled to a Monetary Order under section 67 of the *Act* for damages or loss
- Whether the landlord is entitled to recover the cost of the filing fee pursuant to section 72 of the *Act*

Background and Evidence

1. Tenant's Application

The tenant testified that she moved into the rental unit in January 2007, on a one year lease with the previous owner of the home, and that the tenant did not pay a damage deposit in the form of money. The tenant stated that she had a verbal agreement with the first owner whereby the tenant would work on the rental unit for credit towards the damage deposit of \$375.00.

The new owner and current landlord purchased the home effective May 1, 2008. The tenant signed a written tenancy agreement with the new landlord on April 26, 2008, where the tenant signed in agreement to a rent increase of \$50.00 per month for a rent amount of \$800.00 per month, effective July 1, 2008 and no damage deposit was paid at the time the new tenancy agreement was entered into.

The tenant withdrew her claim to cancel an illegal rent increase as there was documentary evidence which proved she accepted the rent increase.

The tenancy ended on January 31, 2009 when the tenant vacated the rental unit after receiving written notice to do so, for landlord's use, on October 3, 2008. The tenant sent an e-mail to the landlord on February 12, 2009 with her forwarding address and requesting the return of her security deposit.

The landlord testified that he requested the tenant pay a damage deposit but that the tenant argued that she had already paid one so she wasn't going to pay another one. The landlord stated that the tenant never provided him proof of a previously paid damage deposit and the landlord's realtor confirmed, as shown in the documentary evidence, that there is no record of a damage deposit being paid to the previous owner.

The tenant is requesting a rent abatement of \$350.00 for the loss of storage. The tenant testified that she used to be able to use the entire shed/garage prior to the sale of the home and that the new landlord told her that she could only use half of the shed/garage because the landlord was going to use the other half. The tenant stated that she had to move items up to her boyfriend's storage locker for fear they would get stolen if left in the unlocked portion of the shed/garage. When asked how the tenant determined the amount she stated she just picked a number.

The landlord testified and provided documentary evidence that the shed/garage would be accessible for the landlord's use. The landlord stated that he also had a verbal

discussion with the tenant which laid out how the landlord wanted to use the shed/garage. The tenant confirmed this conversation took place and that she was aware of the landlord's use in the tenancy agreement.

The tenant is requesting rent abatement in the amount of \$100.00 because the landlord failed to install a lock on her side of the shed/garage.

The landlord testified that he attended the property to install a lock on the shed/garage, but that the tenant had the shed over flowing with articles that he could not get the doors closed in order to install the lock.

The tenant is requesting \$100.00 because the landlord failed to fix a hot water tap that was leaking for 9 months.

The landlord testified that he looked at the leaky tap and that between the landlord and tenant they determined it didn't need to be replaced and that the leak stopped when the tap was turned tighter.

2. Landlord's Application

The landlord is filing a monetary claim of \$201.00 for the cost incurred to clean the rental unit and dispose of garbage at the landfill, after the tenant moved out of the rental unit.

The tenant testified that once she found out the landlord wasn't going to give her the damage deposit back she made the decision not to clean the rental unit and admitted that the landlord would have had to clean the unit before taking possession.

The landlord filed a claim of \$516.00 for the cost to replace carpet in the small bedroom and hallway as it was dirty beyond cleaning or repair.

The tenant testified that prior to her renting the unit, the house was occupied by squatters who left large dogs locked in the house for several days at a time, and that the carpets were destroyed and damaged by the dogs prior to her taking occupancy. The tenant also testified that a move-in inspection never happened so the landlords have no evidence that the damage was caused by the tenant.

The landlord confirmed that neither a move-in nor a move-out inspection occurred and provided documentary evidence of their final request to conduct a move-in inspection.

The landlord submitted receipts from The Home Depot, for reimbursement of painting supplies purchased to paint the interior of the house. The landlord testified that the tenant had damaged walls and ripped off wallpaper which had to be repaired.

The tenant testified that she had painted parts of the interior of the home in 2007, but that the paint job may not be up to other people's standards.

The landlord is requesting to be reimbursed for painting the exterior of the home in the amount of \$32.97. The landlord advised that the home was built in 1946 and that the siding is the original siding. The landlord stated that the tenant's cats were allowed to enter and exit the home through windows which caused damage to siding underneath these windows.

The landlord is seeking reimbursement for the cost of replacing locks on two doors to the rental unit in the amount of \$129.98

The landlord has submitted a monetary claim for the cost of a washer and dryer in the amount of \$1,149.97. The landlord testified that when he purchased the rental unit it came with two sets of a washer and dryer and that he had a verbal agreement with the tenant that she could keep one set when she moved out. The landlord stated that he was told by the tenant that the washer and dryer that was in the shed/garage was operational but that it needed a new electrical cord installed on the dryer. The landlord

stated that after the tenant moved out he inspected the washer and dryer and found that it would not be operational and so he took the washer and dryer to the landfill.

The tenant agreed that she had a verbal agreement with the landlord giving her permission to keep one of the washer and dryer sets. The tenant testified that she chose to keep the washer and dryer that were in the house and that the landlord was okay with her choice. The tenant stated that the washer and dryer that were stored in the shed/garage were definitely operational and only needed a power cord.

Analysis

In regards to an Applicant's right to claim damages from the other part, Section 7 of the *Act* states that if the landlord or tenant does not comply with this *Act*, 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 sections 33 and 67 of the *Act*, the Applicant tenant 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 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

1. Tenant's Claim

In this instance, the burden of proof is on 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.

A. Request for return of double the damage deposit - The tenant has failed to provide documentary evidence to prove that a security deposit was paid and on what date it was paid, to the previous owner. The tenant has testified that she did not pay the security deposit with money but that she entered into a contra agreement to work off the cost of the security deposit. The tenant did not provide documentary evidence in support of a contra agreement.

There is documentary evidence on file in support of the tenancy agreement for which the tenant entered into with the new landlord. There is no mention of a security deposit paid either to the previous or existing landlord. Based on the foregoing I dismiss the tenant's application for return of the security deposit, or double security deposit, without leave to reapply.

B. Rent abatement for loss of storage – The tenant utilized the full shed/garage storage since the beginning of her tenancy in January 2007. When the new owners had the tenant sign the tenancy agreement they included a clause granting the landlord "access". The tenancy agreement does not stipulate how much access or when the landlord would be allowed such access. Both parties testified to having a discussion at the time the tenancy agreement was signed about how the landlord planned to build a suite in the shed/garage. There was no dispute or doubt that the landlord fully intended to utilize the shed/garage for his own purposes.

Landlords have the right to restrict or remove a service or facility however they must do so in a manner that is stipulated in the *Residential Tenancy Act*. I find that the landlord has contravened section 27(2) of the *Residential Tenancy Act* which stipulates that when a landlord terminates or restricts a service or facility that they must give 30 days written notice and that they must reduce the rent in an amount that is equivalent to the reduction value. In this situation the landlord failed to reduce the rent in an amount that is equivalent to the reduction value. Based on the documentary evidence I find that the landlord took possession of half of the shed/garage at the end of July 2008 and is required to reduce the tenant's rent accordingly. As the tenant was unable to describe how she determined the amount she requested in her claim, I find in favor of the tenant's claim in the amount of \$200.00 (\$5.00 for the month of July 2008 and \$32.50 per month for Aug 2008 up to and including January 2009)

C. Rent abatement of \$200.00 for failing to complete repairs - (hot water tap repair and install a lock on shed/garage) - The onus is on the tenant to prove that a repair was required, that she requested more than two times for the landlord to conduct the repair and that the landlord continued to ignore her requests. In the absence of such proof I dismiss the tenant's claim without leave to reapply.

2. Landlord's Claim

In this instance, the burden of proof is on 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 landlord.

A. Cleaning and waste removal \$201.00 - Section 1 of the *Residential Tenancy Policy Guideline* stipulates that the tenant is responsible for paying cleaning costs where the property is left at the end of the tenancy in a condition that does not comply with reasonable standards. Based on the client's testimony that she willingly did not clean the rental unit at the end of the tenancy I find in favour of the landlord's claim in the amount of \$201.00.

B. Repairs, interior and exterior painting to the rental unit (Carpet \$516.00, Home Depot Receipts \$34.14, \$27.51, \$32.97) In the absence of a move-in or move-out inspection, the landlord has failed to prove that the repairs and painting are required as a result of the tenant's actions or neglect. I hereby dismiss the landlord's claim without leave to reapply.

C. Replacement of Locks - \$129.98 – The landlord's claim stipulates that 3 keys that were returned did not match any of the locks; however there is no documentary evidence to prove that the correct keys were not returned. In addition to whether the keys worked or not, section 25 of the *Residential Tenancy Act* stipulates that when a tenancy ends, the landlord must pay all costs associated with re-keying or changing locks. Based on the foregoing I dismiss the landlord's claim without leave to reapply.

D. Cost to replace washer and dryer \$1,149.97 – Both parties testified to a verbal agreement whereby the tenant was given the option to keep one washer/dryer set, and that it was the tenant's option to choose which set she would keep. I find that the landlord has failed to prove that the tenant has failed to uphold any part of aforementioned agreement and dismiss his claim without leave to reapply.

As the landlord was not primarily successful in his application, I find that I cannot approve his request to recover the filing fee for his application.

Conclusion

Tenant's Claim

A. I HEREBY DISMISS the tenant's claim for return of double the damage deposit without leave to reapply

B. I HEREBY FIND in favor of the tenant's monetary claim for the loss of storage in the amount of \$200.00

C. I HEREBY DISMISS the tenant's claim of \$200.00 for the landlord failing to repair the unit, without leave to reapply

The tenant withdrew her claim to cancel an illegal rent increase

Landlord's Claim

A. I HEREBY FIND in favour of the landlord's monetary claim for cleaning and waste removal in the amount of \$201.00

B. I HEREBY DISMISS the landlord's claim for repairs and interior / exterior painting to the rental unit, without leave to reapply

C. I HEREBY DISMISS the landlord's claim for replacement locks without leave to reapply

D. I HEREBY DISMISS the landlord's claim for the cost to replace a washer and dryer, without leave to reapply

The landlord's request to recover the filing fee is dismissed without leave to reapply.

I HEREBY ORDER that the Tenant's Monetary Order in the amount of \$200.00 be offset against the Landlord's Monetary Order in the amount of \$201.00 with a balance payable of \$1.00 to the landlord.

As there is only \$1.00 payable after offsetting the two monetary claims, an official Order will not be issued.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: April 29, 2009.

Dispute Resolution Officer