



Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing and Social Development

Decision

Dispute Codes:

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| <u>MNR</u> | Monetary Order for Rent Owed |
| <u>MNSD</u> | The Return of the Security Deposit |
| <u>MNDC</u> | Money Owed or Compensation for Damage or Loss |
| <u>FF</u> | Recover the Filing Fee for this Application from the Respondent |

Introduction

The hearing was convened to deal with an application by the landlord for a monetary for rent owed for the month of May 2009 as well as late fees and bank charges for a returned cheque. The hearing was also convened to hear an application by the tenant to obtain an Order for the return of the security deposit and a rental abatement for the landlord's failure to provide services and facilities agreed to under the tenancy agreement and required by the Act. Each party requested reimbursement for the cost of filing the application.

Issues to be Decided for the Landlord's Application.

The landlord was seeking compensation for rent, late fees and bank charges and the issue to be determined based on the testimony and the evidence is whether the landlord is entitled to compensation under section 67 of the Act.

Issues to be Decided for the Tenant's Application

The issues to be determined for the tenant's application are:

- Whether the tenant is entitled to the return of the security deposit under section 38 of the Act.

- Whether or not the tenant is entitled to compensation under section 67 of the Act for damages.
- Whether the tenant is entitled to a retro-active abatement in rent based on the landlord's restriction of, or failure to provide, services and facilities that were part of the agreement. This determination is dependant upon the following:
 - 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, on a balance of probabilities:
 - that costs or losses were incurred due to the actions of the landlord in violation of the Act or Agreement by the landlord
 - proof that the actual amount or value being claimed is justified

The landlord had the burden of proof to show that rent was owed and unpaid. The tenant had the burden of proof to establish that the landlord failed to provide services and facilities that were supposed to be part of the agreement. The tenant also had the onus to prove that compensation was warranted.

Background and Evidence – Landlord's Application

The landlord testified that the tenancy began in May 2009 with rent set at \$1,150.00. The landlord stated that the tenant paid a security deposit of \$575.00 and gave the landlord a cheque for the first month's rent in the amount of \$1,150.00, but that the tenant subsequently placed a stop pay on the rent cheque. The landlord testified that the tenant had written a list of repairs that needed to be done with the deadline agreed upon as May 15, 2009. The landlord testified that the tenant later paid \$575.00 towards the rent. The tenant but moved out before the repairs could be done. The landlord testified that a Ten-Day Notice to End Tenancy for Unpaid Rent had been issued and served on the tenant on May 3, 2009.

The tenant did not dispute the above testimony, but stated that the tenant felt that the full rent should not be paid based on the fact that the unit was not in good repair upon moving in and the landlord appeared unwilling to honour promises for renovations made prior to the move-in date.

Background and Evidence – Tenant's Application

The tenant was claiming the return of the security deposit as required under section 38 of the Act.

The tenant was also claiming additional compensation for deficiencies in the unit in regards to security, cleanliness and needed repairs that were not rectified by the landlord as promised.

The tenant testified that negotiations to settle the dispute prior to making application were frustrating in that the landlord had agreed on certain terms for ending the tenancy, then later reneged on the verbal agreement. The tenant stated that although there was a written agreement giving the landlord until May 15, 2009 to repair the items on the list, there was good reason to believe that the landlord had no intention of repairing everything listed. The tenant stated that, by that time the tenancy relationship was already damaged beyond repair partially due to the landlord's efforts to intimidate the tenant. The tenant testified that half a month's rent was paid and the decision was made to end the tenancy mid-month. The tenant's position was that the full rent for the May should not be charged due to numerous problems that arose affecting security and the livable condition of the unit. Moreover, the tenant was forced to do some cleaning and repairs on the unit which the tenant feels would warrant some compensation.

Analysis

Section 26 (1) states 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 instance, I find that \$1,150.00 rent was owed by the tenant to the landlord on May 1, 2009 and the tenant did not pay this in violation of section 26.

Section 32 of the Act states that a landlord must provide and maintain residential property in a state of decoration and repair that (a) complies with the health, safety and housing standards required by law, and (b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant. A landlord's failure to ensure that this provision of the Act was met would be a violation of the Act. It is also clear that prior to the move-in date, the landlord had made certain verbal representations about proposed renovations, some of which were not fully completed. In addition, it is evident that the tenant's expectations with regards to the extent of the interior finishes were not fulfilled. Under such circumstances a tenant is at liberty to make an application for dispute resolution to obtain an order forcing the landlord to comply with the Act or agreement, to request compensation or an order to end the tenancy. However, withholding rent is not permitted under the Act, nor is ending the tenancy in a manner that does not comply with the Act.

That being said, I find that both the landlord and the tenant had a share in the demise of this tenancy and unfortunately found that they were unable to find a final compromise and sought a resolution through cross applications for damages. However, during these proceedings a mediated discussion ensued and it was mutually agreed that the landlord would retain the security deposit in full satisfaction of all past and future claims between these two parties.

Conclusion

Based on the mutual agreement between the parties, I hereby order that the landlord retain the tenant's security deposit in full satisfaction of any and all past or future claims by either party.

July 2009

Date of Decision

Dispute Resolution Officer