



Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing and Social Development

Decision

Dispute Codes:

MNSD Monetary Order for the Return of the Security Deposit

Introduction

This Dispute Resolution hearing was convened to deal with an Application by the tenant for an order for the return of the security deposit and the pet damage deposit retained by the landlord. Both the landlord and the tenant appeared along with representatives and each gave affirmed testimony.

Preliminary Matter

The tenant testified that evidence submitted by the respondent was not received by the tenant. The landlord disputed this testifying that the evidence was served on the tenant. The landlord's evidence consisted primarily of invoices documenting the landlord's costs and losses, which would only be relevant if this was an application for damages and loss against the tenant by the landlord. However as this was the tenant's application for return of the security deposit, most of the landlord's evidence was immaterial to section 38 of the Act. In any case, during the hearing it was evident that the tenant was already familiar with the information submitted by the landlord.

Issue(s) to be Decided

The tenant was seeking to receive a monetary order for the return of the security deposit that the tenant considers as having been wrongfully retained by the landlord. The issues to be determined based on the testimony and the evidence are:

- Whether the tenant is entitled to the return of the security deposit pursuant to section 38 of the Act. This determination is dependant upon the following:

- Did the tenant pay a security deposit?
- Did the tenant furnish a forwarding address in writing to the landlord?
- Did the tenant provide written consent to the landlord permitting the landlord to retain the security deposit or any portion of the deposit at the end of the tenancy?
- Did the landlord make application to retain the security deposit for damages or loss within 15 days of the end of the tenancy or the receipt of the forwarding address?

The burden of proof is on the applicant to show that the deposit was paid and that the landlord did not have written permission or an order to keep the deposit.

Background and Evidence

The tenant submitted into evidence a written chronology of problems during the tenancy. Also submitted into evidence was a copy of a letter from the tenant to the landlord dated February 15, 2009 terminating the tenancy effective March 15, 2009 and agreeing that the landlord could retain the security deposit of \$500.00 for lost rental income. In this communication, the tenant expressed a willingness to cooperate in allowing showings of the unit and indicated that the tenant would be vacating the unit on February 28, 2009. The letter from the tenant also stated that the unit would be cleaned and utilities paid up to the end of February 2009. Attached to the letter was a list of concerns during the tenancy, including maintenance problems, allegations about the landlord's noncompliance with the Act and health concerns regarding mould in the unit. The tenant testified that, despite the letter, there was a subsequent conversation during which the landlord verbally agreed that the utilities owed by the tenant could be deducted from the tenant's deposit and the remainder would be returned to the tenant. The tenant testified that one month notice was given on February 15, 2009, but given the situation felt it was in the tenant's best interest to move out on February 28, 2009. The tenant testified that the amount of the utilities being claimed was not properly

verified and that payment was withheld awaiting return of the deposit. The tenant stated that the forwarding address was given to the landlord, but none of the deposit had been refunded. The tenant was now seeking double the deposit under section 38 of the Act. It was the tenant's expectation that the landlord could have re-rented by March 1, 2009.

The landlord testified that the tenant did not give adequate notice under the Act and that this resulted in a loss of rent for the month of March 2009. The landlord testified that there was no need to make an application for dispute resolution to keep the deposit within 15 days of receiving the forwarding address because the tenant had already provided written consent allowing the landlord to retain the security deposit to offset part of the rent owed for March. The landlord denied that any verbal agreement between the parties was made cancelling the tenant's written permission to keep the deposit. The landlord pointed out that, the letter had also indicated that the tenant would be leaving on February 28, 2009 and would pay all of the utilities owed to that date. The landlord testified that these utilities were never paid and the landlord's position is that the landlord was and is entitled to retain the deposit of \$500.00 and is still owed money for the outstanding utilities.

Analysis

In regards to the return of the security deposit and pet damage deposit, I find that section 38 of the Act is clear on this issue.

The Act states that the landlord can only retain a deposit if the tenant agrees to this in writing. If the permission is not in written form and signed by the tenant, then the landlord's right to keep the deposit without obtaining an order does not exist. In this instance I find that the evidence confirmed that the tenant had at one point given written permission for the landlord to retain the deposit.

In regards to the conflicting verbal testimony about the subsequent mutual agreement, it is important to note that two parties and the testimony each puts forth do not stand on equal ground. The reason that this is true is because one party must carry the added

burden of proof. In other words, the applicant, in this case the tenant seeking compensation, has the onus of proving during these proceedings that the claim is justified under the Act based on verified facts.

When the evidence consists of disputed verbal testimony in the absence of independent and tangible evidence, then the party who bears the burden of proof is not likely to prevail. Moreover, the evidentiary weight of testimony supported by documentation, in comparison with contested verbal testimony, is understandably stronger. I find on a balance of probabilities that the landlord was entitled to retain the security deposit based on written permission from the tenant.

In regards to the various other claims and complaints made by the landlord or the tenant, I am not able to hear nor consider these matters during the proceeding before me. This application and hearing dealt with the tenant's application under section 38 of the Act. That being said, each party is still at liberty to pursue any claims through a separate application for dispute resolution pursuant to section 67 of the Act.

In the matter before me, however, I find that under section 38, the tenant is not entitled to a refund of the security deposit retained by the landlord and I must dismiss the claim.

Conclusion

Based on the testimony and evidence presented during these proceedings, I hereby dismiss the tenant's application in its entirety without leave.

July 2009

Date of Decision

Dispute Resolution Officer