Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing and Social Development

Decision and Reasons

Dispute Codes:

MNSD, MNDC, RR, FF

Introduction

This hearing was convened on the tenant's application requesting an Order to cancel the Ten-Day Notice to End Tenancy for Unpaid Rent and for a monetary order in compensation for loss of quiet enjoyment and harassment by the landlord and the $50.00 cost of this application. Both parties appeared and each gave testimony in turn.

At the outset of the hearing, the tenant advised that the tenancy had since been ended due to the landlord's actions in noncompliance with the Act and that the tenant was forced to move out. Accordingly the portion of the application relating to cancelling the Notice is no longer material. However, the monetary amount of $1,200.00 shown as being owed on the Ten-Day Notice is still being disputed by tenant. In addition the tenant's claim for damages for loss of quiet enjoyment is also still under dispute.

Issue(s) to be Decided

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

- Is the monetary amount for rental arrears owed as claimed by the landlord and shown on the Ten-Day Notice accurate.
- Has the tenant submitted proof that the tenant's claim for damages or loss is supported pursuant to *section 7* and *section 67* of the Act by establishing :

- a) that the damage or loss was from the landlord's violation of the Act
- b) verification of the actual costs to rectify the loss or damage
- c) that the tenant took reasonable action to minimize the damage

- Whether the tenant should be allowed to reduce the rent for loss of quiet enjoyment. This determination is depends on answers to the following:
  - Has the claimant presented proof of the devaluation of the tenancy?
  - Has the claimant presented proof that the landlord was responsible by violating the Act or tenancy agreement?

The burden of proof is on the respondent/landlord to justify the amount shown on the Ten-Day Notice. The burden of proof is on the applicant/tenant to prove the amount by which the tenancy was devalued and that the amount of the claim caused by the landlord's violation of the Act.

Background and Evidence

Both the landlord and the tenant agree on the following facts:

- The tenancy began on July 2, 2009
- The initial rent agreed upon by both parties was $1,200.00 per month.
- The tenant paid the landlord on July 2, 2009 in cash and no receipt was issued.
- A blank tenancy agreement was given by the landlord for the tenant to fill out.
- No tenancy agreement was ever signed by both of the parties.
- The landlord replaced the refrigerator in July 2009.
- A 10-Day Notice was issued by the landlord in August 2009.
- Police attended the premises on more than one occasion.
- The tenant moved out of the unit on August 17, 2009

The tenant testified that on July 2, 2009, the tenant paid $2,400.00, $1,200.00 of which was for rent for July 2009 and $1,200.00 was for the security deposit which was the equivalent to one month rent. The tenant testified that the landlord refused to issue a receipt. The tenant's written chronology submitted into evidence states that on July 5, 2009, the tenant decided to leave because the unit was noisy and unsuitable for their needs and because they were being over-charged. The tenant decided to vacate and asked the landlord to return their $1,200.00 deposit, without success. The tenant testified that they composed a document with terms for mutually ending the tenancy. A copy of this unsigned document was in evidence and showed that the tenant accepted rent of $1,200.00 per month and, in exchange for the tenant vacating the unit between July 20 and July 31, 2009, the landlord would agree to return the $1,200.00 security deposit to the tenant on July 20, 2009. The tenant testified that the landlord refused to sign the mutual agreement or refund the deposit. The tenant testified that, on July 20, 2009, the tenant and the landlord renegotiated the rental rate and verbally agreed that rent would be lowered from $1,200.00 to $850.00 per month for July and $850.00 for August 2009 and that the remaining $700.00 would be designated as a security deposit. The tenant testified that because rent was paid in full for August, the tenant did not pay additional rent on August 1, 2009. The tenant stated that $2,400.00 was paid and would cover the rent and deposit. The tenant pointed out that the $700.00 deposit still exceeded the equivalent of one-half a month rent. The tenant testified that on August 3, 2009, the landlord suddenly changed his position and insisted that the rent to be charged would be $1,000.00 per month and also demanded that the tenant had to pay an additional $600.00 towards the security deposit. The tenant stated that this additional $600.00, added to the $2,400.00 previously collected would be $3,000.00, enough to apparently cover rent of $1,000.00 for July 2009, rent of $1,000.00 for August 2009 and leave the landlord with a total security deposit of $1,000.00, the equivalent of one-month's rent. The tenant submitted into evidence a copy of a hand-written undated, unsigned note allegedly scripted by the landlord showing the above calculations. The landlord denied writing this note.

The tenant testified that on August 11, 2009, the landlord issued a Ten-Day Notice to End Tenancy for Unpaid Rent showing rent owed as $1,200.00 and was fraudulently back-dated to September 7, 2009. The tenant's position was that because the tenant was never in rental arrears, the Notice was void. The tenant testified that, afterward, the landlord acted in a threatening manner and, despite the Notice being without merit, the tenant was forced to move out on August 17, 2009 for the safety of the family. The tenant testified that an application was made to have the unwarranted Ten-Day Notice cancelled. The tenant testified that the police had to be present to monitor the move out because of their fear of the landlord . The tenant testified that this constituted an illegal eviction under the Act. For the expenditures and the loss of quiet enjoyment, the tenant is claiming $2,000.00 in compensation.

The landlord testified that the rent was set at $1,200.00 from the start of the tenancy and was never changed at any time. The landlord testified that the tenant only paid $1,200.00 in July which represented the first month's rent for the month of July 2009 and did not pay any security deposit at all. According to the landlord, he waived the security deposit because "they had no money". The landlord conceded that he failed to issue a receipt for the payment of $1,200.00 in cash at the start of the tenancy because the tenant had not yet signed any rental agreement and had not yet paid any security deposit. The landlord testified that he gave the tenants a blank tenancy agreement on July 3, 2009, instructing them to fill out this form if they wished to stay. The landlord testified that, if the tenants had decided to stay, a security deposit would then be required at that time and that he intended to issue receipts for both payment of the rent and the deposit in future when the tenancy agreement was signed by all. The landlord testified that the tenants failed to complete the agreement. The landlord testified that on August 1, 2009 when he went to collect rent he expected the tenants to pay $1,200.00 for the rent for August, and when they failed to do so, a Ten-Day Notice to End Tenancy was issued on August 7, 2009. The landlord did not agree with the tenant's monetary claim for damages and in fact feels that the tenant still owes the landlord $1,200.00 for defaulting on rent owed for the month of September 2009.

Analysis

Collecting Excess Rent and Deposit

In regards to whether or not the landlord wrongfully collected excessive deposit and failed to issue a receipt, I find that pursuant to section 19 (1) of the Act, a landlord can not require either a security deposit that is greater than the equivalent of 1/2 of one month's rent payable under the tenancy agreement. The tenant alleged that the landlord received the equivalent of one month deposit in the amount of $1,200.00, along with the $1,200.00 rent, for which no receipt was issued. In contrast to this claim, the landlord stated that no deposit was requested or paid, but would have been collected later on, once the written tenancy agreement was signed.

I find that section 20 of the Act states that a landlord must not require a security deposit at any time other than when the landlord and tenant enter into the tenancy agreement. I find that, regardless of the lack of a written rental agreement, a tenancy was actually entered into by these parties at the precise time that the landlord accepted $1,200.00 rent. I find that based on the testimony of both parties, this transpired on July 2, 2009. I find that, under the Act, this is the only time that a deposit could be collected. I find that the landlord would be in violation of the Act if he subsequently attempted to collect a deposit later on as he purportedly planned to do.

The landlord did acknowledge that the tenant paid $1,200.00 for *rent* in cash and that no receipt was ever issued for the rent payment and I find that this violated section 26 (2) of the Act, which states that a landlord must provide a tenant with a receipt for rent paid in cash. By failing to comply with the Act by properly issuing a receipt showing the amount paid, the landlord had placed himself in a position where he was now not able to verify how much money he had collected from this tenant. If the landlord was expecting payment of a deposit later on there was nothing to indicate it was ever pursued.. The only action taken against the tenant occurred in August when the Ten-

Day Notice was issued for unpaid rent for August. I find that the landlord never sent any communications to the tenant in regards to the alleged failure to pay a security deposit.

I find that, although the landlord blamed his failure to issue a receipt and collect a security deposit on the tenant's inaction in completing the blank tenancy agreement he gave them, this does not serve to justify non-compliance by the landlord . I find that the provision of a written tenancy agreement containing all of the standard terms is the landlord's responsibility under section 13 of the Act. Moreover, I find that the lack of a written rental agreement does not affect the landlord's legal obligation to issue a receipt under section 26(2) and also does not affect the timing of the collection of a security deposit under section 20 of the Act. I do not accept the explanation offered by the landlord that delaying issuance of a receipt pending the signature of an agreement and payment of a deposit is a usual business practice. In fact I find that it is a normal course of business to charge one-half a month's rent as security. Given the evidence and testimony of the parties, I find on a balance of probabilities, that when the tenancy began on July 2, 2009, the tenant did pay $2,400.00 consisting of $1,200.00 for rent for the month of July 2009 and the equivalent of one month, $1,200.00, as security deposit.

Demanding Excess Rent

In regards to whether or not the landlord violated the agreement by wrongfully increasing the rent, I find that the rental rate mutually agreed-upon from the outset, by both of these parties, was $1,200.00 per month. Whether this rate was fair or not is immaterial because an agreement was made. The tenant's testimony was that after some negotiation, the landlord subsequently made a verbal commitment to then decrease the rent to $850.00 per month. The landlord vehemently denied this allegation and I find that there is no evidence, outside of the tenant's claim, that this had ever occurred. Under these circumstances, I find it unlikely that, in exchange for the tenant agreeing not to vacate without notice, the landlord would ever agree to a lower rental rate, particularly as the tenant would not have any bargaining leverage to make such a demand. The tenant could not legally carry out the threat to immediately end the

tenancy. In fact, once the tenant had entered into a tenancy agreement for $1,200.00 rental rate per month the tenant would not be at liberty under the Act to arbitrarily vacate for any reason prior to the end of August 2009. Section 45 of the Act states that a tenant can end a tenancy by giving written notice that:

a. *is not earlier than one month after the date the landlord receives the notice, and*

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.*

In this situation, regardless of what the landlord did or did not do, the earliest effective date that the tenant could validly end the tenancy in compliance with the Act would be August 31, 2009. Regardless of the landlord's actions, if the tenant vacated any time before that date, the tenant would be liable for all rent owed up to August 31, 2009.

Therefore, I find that the landlord would not have any particular incentive to renegotiate the existing terms as described by the tenant, nor a reason to reduce the rent.

The tenant's claim that there was an agreed-upon rent reduction hinged on a purported verbal re-negotiation of new terms amending the first unwritten tenancy agreement.

I find that, although the Landlord failed to comply with section 13 of the Act by issuing a written agreement, the verbal terms contained in a verbal tenancy agreement may still be recognized because the definition of "*tenancy agreement*" in section 1 of the Act does include *verbal* terms. However, on the subject of whether or not uncertain terms of a tenancy agreement can be enforced, section 6(3) of the Act states that a term of a tenancy agreement is not enforceable if "*the term is not expressed in a manner that clearly communicates the rights and obligations under it."*

In the case of verbal terms, I find that once the parties are in dispute about what was agreed-upon, then unwritten terms are not considered to be expressed in a manner that clearly communicates the rights and obligations of the parties. Only verbal terms that <u>both</u> parties agree upon can be considered as comprehensible and enforceable. I find

that both parties agreed upon the fact that the initial rent was $1,200.00 and therefore that term is clear and enforceable. The parties were in disagreement with the purported revisions to the rental rate.

In any case, even if I accepted that the initial rent being $1,200.00 per month was amended, the Act does not necessarily allow changes to existing terms of this nature, verbal or otherwise. Section 14 (1) of the Act states that a tenancy agreement may not be amended to change or remove a standard term. The rental rate agreed-upon by the parties is considered to be a standard term and therefore cannot be altered. In fact, even non-standard terms, which can be amended, would require a written agreement signed by both parties.

Given the above, I find that both parties had mutually agreed upon a rental rate of $1,200.00 and the tenant cannot rely on a purported re-negotiation, which, even if it did genuinely occur, would be contrary to the Act.

Ten-Day Notice

The tenant has put forth the argument that the landlord's issuing of the Ten-Day Notice was a form of harassment and in violation of the Act since, according to the tenant, no rent was outstanding at the time. I find that a landlord's action in issuing a Notice to End Tenancy, whether found to be with or without merit, does not constitute a violation of any provision of the Act, nor does this qualify as interference with the tenant's peaceful enjoyment.

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 the Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

In this instance, the tenant acknowledged that no rent was paid on August 1, 2009 when it was due. The tenant's position was that, by virtue of the fact that the tenant had

already paid $2,400.00 for rent and a security deposit, no rent was owed on August 1, 2009 and therefore there was absolutely no basis for a Ten-Day Notice to be issued.

Having found that the correct rent agreed upon by the parties was set at $1,200.00 per month, and that the landlord had wrongfully collected $1,200.00 security deposit instead of the $600.00 which was the maximum permitted under the Act, I find that the tenant would have been validly entitled to deduct the overpayment of the deposit and was justified in holding back the amount of $600.00 from the rent owed for August 2009. This right is pursuant to section 19(2) which states that if a landlord accepts a security deposit or a pet damage deposit that is greater than the amount permitted under subsection (1), the tenant may deduct the overpayment from rent or otherwise recover the overpayment. In this instance, I find that the landlord was only permitted to charge a deposit of $600.00 and that the tenant had over-paid by an additional $600.00 which the tenant was entitled to deduct from rent owed for the month of February 2009.

That being said, I find that the tenant was still required to pay the remaining $600.00 rent still owed on August 1, 2009 and therefore was in arrears as of August 2, 2009. Accordingly, I find that, although the amount shown should be amended, this would not function to invalidate the Ten-Day Notice. The landlord's notice was issued under section 46 for rental arrears owed and I find that this was a fact, whether it was issued on August 7, 2009 or on August 11, 2009. I accept the tenant's testimony that the Ten-Day Notice was received on August 11, 2009. Section 46(4) states that, within 5 days after receiving a notice under this section, the tenant may (a) pay the overdue rent, in which case the notice has no effect, or (b) dispute the notice by making an application for dispute resolution. I find that the tenant made an application to dispute the Notice but still felt it necessary move out on August 17, 2009, which has resolved the issue of possession. However, I find that the amount of outstanding rent supporting the Ten-Day Notice must be changed to $600.00 owed for the month of August 2009 to acknowledge that $600.00 from the tenant's excess security deposit was already allocated towards rent for the month of August, 2009.

Given the above, I find as a fact that the landlord still currently holds a total of $600.00 security deposit in trust for the tenant and must refund this amount or make application to keep it within 15 days of receiving the tenant's written forwarding address in accordance with section 38 of the Act.

Illegal Eviction and Harassment

The tenant is claiming a rent abatement as damages for loss of quiet enjoyment due to harassment by the landlord. In regards to an Applicant's right to claim damages from the other party, Section 7 of the Act states that if a 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 section 67, the Applicant would be required to prove that the other party did not comply with the Act or agreement and that this non-compliance resulted in costs or losses to the Applicant. 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 amount required to compensate for the claimed loss.
4. Proof that the claimant followed section 7(2) of the Act by taking steps to minimize the loss or damage.

In order to support damages, and meet element 2 of the test, the tenant must prove that the landlord had contravened the Act causing a loss to the tenant. The tenant alleged the following violations:

1. Collecting excessive security deposit and not issuing a receipt;
2. Not following agreed-upon terms for rental rate, demanding excess rent;
3. Issuing a Ten-Day Notice when rent was not in arrears;
4. Illegally evicting the tenant by forcing them out of the unit instead of waiting for the hearing or making application to obtain an order to end the tenancy;
5. Harassing the tenants during the tenancy, depriving them of quiet enjoyment.

1. While I find that there were certainly several technical violations of the Act perpetrated by the landlord, such as failing to issue a receipt and neglecting to create a written agreement, I do not find that any of these technical violations directly resulted in a quantifiable loss for the tenant.

2. I find that there was no contravention of the Act by the landlord in regards to failing to follow agreed-upon terms relating to rental rate, nor did the landlord demand excess rent than that to which it was entitled under the tenancy agreement.

3. The landlord's action in issuing a Ten-Day Notice , whether found to be with or without merit, would not constitute a violation of the Act, nor would it qualify as harassment or interference with peaceful enjoyment. In any case, the allegation that the landlord issued the Notice despite no rental arrears was found to be untrue.

4. The tenant has alleged that the landlord committed a violation of the Act by forcing the tenant to vacate instead of waiting for the hearing. I find that, almost from the beginning the tenant was not happy with the tenancy terms willingly agreed-upon by both parties and, based on the tenant's testimony, they objected to the premises and living conditions. Moreover, I find that, early in the tenancy, the tenant had made

the decision that the tenant would be moving elsewhere as soon as possible and made attempts to negotiate an early end to the tenancy, going so far as to make preparations to relocate during the month of July 2009. The tenant stated that they had hoped to immediately recoup their $1,200.00 security deposit and be on their way to more suitable accommodation. In reality, I find that, failing a negotiated end to the tenancy, the tenant would not be able to validly terminate the tenancy except as provided under section 45 of the Act and if such notice was given prior to July 31, 2009, the tenancy could not be legally ended by the tenant until August 31, 2009 at the earliest. The tenant was admittedly eager to leave which I find to be inconsistent with the tenant's application seeking to *preserve* the tenancy. I find that although the tenant has claimed that the threatening conduct of the landlord was the reason for vacating, the tenant has offered insufficient proof of this conduct. I find that the tenants left of their own volition on August 17, 2009, which was the effective date shown on the Ten-Day Notice.

5. In regards to the tenant's claim for $2,000.00 monetary compensation for loss of quiet enjoyment due to harassment, it is necessary to meet all elements of the test for damages to support the claim. In particular, the tenant must show that a loss by the landlord's violation of the Act. While there is no doubt that the tenancy was marred by a series of disagreements between the parties, it is evident that terminating this tenancy was likely the best option for both. Allegations about the landlord's threatening conduct, if true, would be of serious concern. However the applicant has furnished insufficient proof of this and, based on the testimony, it appears that much of the conflict centered around the parties trying to alter the terms or to end the tenancy in a manner that suited them both. I find no justification to support the tenant's $2,000.00 claim for compensation for loss of quiet enjoyment.

In the matter that is before me I find that the tenant has not sufficiently met the burden of proof to justify a monetary order for compensation against the landlord.

Conclusion

Based on the evidence and the testimony, I hereby dismiss the tenant's application in its entirety without leave to reapply.

September 2009 _____

Date of Decision

Dispute Resolution Officer