

## **DECISION**

Dispute Codes      MNDC MNSD FF

### Introduction

This hearing dealt with an Application for Dispute Resolution by the Tenant to obtain a Monetary Order for compensation for damage or loss under the Act, for the return of the security deposit, and to recover the cost of the filing fee from the Landlord for this application.

Service of the original hearing documents and the amended application, by the Tenant to the Landlord, was done in accordance with section 89 of the Act, sent via registered mail on August 14, 2009 and November 20, 2009. Mail receipt numbers were provided in the Tenant's documentary evidence. The Landlord is deemed to be served the hearing documents on August 18, 2009 and November 25, 2009, the fifth day after they were mailed as per section 90(a) of the Act.

The Tenant appeared, gave affirmed testimony, was provided the opportunity to present his evidence orally, in writing, and in documentary form.

All of the testimony and documentary evidence was carefully considered.

### Issues(s) to be Decided

Is the Tenant entitled to an Order under sections 38, 67, and 72 of the *Residential Tenancy Act*?

### Background and Evidence

The Tenant testified that he entered into a written tenancy agreement effective May 1, 2002 for a fixed term which switched over to a month to month tenancy at the end of the fixed term. The Tenant could not provide testimony as to when the fixed term ended. The Tenant stated that his rent was approximately \$2,225.00 per month and he paid a security deposit of approximately \$1,075.00 sometime around the middle of April 2002.

The Tenant testified that the Landlord served him with written notice to end the tenancy because the Landlord sold the rental unit and that the notice stated that the Tenant had

to vacate the rental unit no later than July 1, 2009. The Tenant could not remember exactly when the written notice to end the tenancy was served to him.

The Tenant confirmed that his evidence consisted of a typed out list of items with the amount he is claiming and a copy of a printout of a house for sale.

The Tenant argued that when he did not have all of his possessions out of the rental unit by approximately 1:00 p.m. on July 1, 2009, the Landlord paid for a dumpster to be delivered to the rental unit and the Landlord discarded the Tenant's possessions in the dumpster. The Tenant stated that he was busy at work and could not arrange to have the remaining items removed. The Tenant confirmed that he did not call the police and he did not submit additional evidence in support of his claim.

When asked when he supplied the Landlord with his forwarding address in writing the Tenant responded that he had sent the Landlord an e-mail sometime in July 2009 and that he listed his forwarding address in this e-mail.

The Tenant stated that he is also applying for compensation because the new owner of the house did not move into the rental unit and the house is listed for sale again by the new owner.

### Analysis

I find that in order to justify payment of damages under sections 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, in this case the Tenant, bears the burden of proof and the evidence furnished by the Applicant Tenant 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 doing whatever is reasonable to minimize the damage or loss

In regards to the Tenant's right to claim damages from the Landlord, 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.

In this case the Tenant is seeking a monetary claim in the amount of \$12, 360.00 for the return of his security deposit and for damage and loss under the *Act* however the Tenant did not provide documentary evidence to support that a tenancy existed, the amount and date of payment of a security deposit, and notice that the tenancy ended for Landlord's use. In the absence of the respondent Landlord and in the absence of documentary evidence to support that a tenancy existed and a loss occurred, I find that the Tenant has failed to meet the test for damage or loss as listed above and I hereby dismiss his application, without leave to reapply.

As the Tenant was not successful with his application I decline to award him the application fee.

#### Conclusion

I HEREBY DISMISS the Tenant's application, without leave to reapply.

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: December 07, 2009.

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Dispute Resolution Officer