Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes MND, MNSD, FF
MNDC, MNSD, FF

Introduction

This matter dealt with an application by the Landlord for compensation for damages to the rental unit, to recover the filing fee for this proceeding and to keep the Tenant's security deposit in partial payment of those amounts. The Tenant applied for compensation for damage or loss under the Act or tenancy agreement, to recover the filing fee for this proceeding and for the return of his security deposit.

Issues(s) to be Decided

1. Is the Landlord entitled to compensation and if so, how much?
2. Is the Tenant entitled to compensation and if so, how much?
3. Is the Tenant entitled to the return of his security deposit?

Background and Evidence

This tenancy started on March 1, 2009 and ended on July 31, 2009. Rent was $700.00 per month payable in advance on the 1st day of each month. The Landlord said the Tenant paid a security deposit of $175.00 at the beginning of the tenancy. The Tenant claimed that his co-Tenant also paid a security deposit of $175.00 and that he paid his co-tenant this amount when he moved out. The Landlord claimed that the Tenant's co-tenant gave his verbal consent to her keeping his ½ of the security deposit because he moved out without giving sufficient notice. The Tenant said he paid the full rent when his co-Tenant moved out. The Tenant gave the Landlord his forwarding address in writing on July 28, 2009.

The Tenant claimed that he moved all of his furniture out of the rental unit on July 31, 2009 and that the Landlord gave him verbal permission to remove the balance of his articles a few days later. The Landlord claimed that she only gave the Tenant permission to finish cleaning and to return the keys by August 1, 2009, and told him he could store only his washer and dryer in the rental unit for a couple of days. The Parties agree that on August 3, 2009, the Landlord's boyfriend asked the Tenant at his workplace for the keys to the rental unit and advised him that his articles would be removed from the rental unit and put in the back yard that day.

The Tenant said he could not retrieve his belongings on August 3, 2009 but went to the rental property the following day and found his belongings tossed into a heap in the

back yard. The Tenant said an iPod and frying pan were missing and 2 sets of dishes were broken.

The Landlord claimed that the items left behind by the Tenant were mostly garbage. The Landlord said the Tenant had failed to throw out the garbage during the tenancy and as a result, she incurred $153.00 in dump fees and spent 12 hours cleaning out the rental unit. In support, the Landlord provided photographs of the rental property at the end of the tenancy.

The Landlord also claimed that the Tenant damaged a door and was responsible for repairing a wall and fence. The Landlord said the Tenant also agreed to replace his share of oil in the furnace at the end of the tenancy but did not do so. The Tenant did not dispute that he was responsible for damaging a door and for replacing the oil in the furnace. The Tenant claimed that the wall was damaged when the upstairs tenant threw a microwave at him. The Tenant also claimed that the fence was old and rotten so that when he leaned on it, it broke.

The Landlord claimed the Tenant gave her verbal permission to keep the security deposit in satisfaction of the damages to the door and to replace the furnace oil.

Analysis

Tenant's Application:

Given that the Tenant was responsible to the Landlord for the full amount of the rent when his co-tenant moved out, I find that it was a joint tenancy. RTB Policy Guideline #13 (Rights and Responsibilities of Co-Tenants) says that regardless of who paid the security deposit, either co-tenant may agree ***in writing*** to allow the Landlord to keep all or part of the deposit or may apply for arbitration for the return of the deposit. As the Tenant's co-tenant did not give the Landlord written authorization to keep all or part of the security deposit, I find that the security deposit held by the Landlord for this joint tenancy is $350.00.

Section 38(1) of the Act says that a Landlord has 15 days from either the end of the tenancy or the date she receives the Tenant's forwarding address in writing (whichever is later) to either return the Tenant's security deposit or to make an application for dispute resolution to make a claim against it. If the Landlord does not do either one of these things and does not have the Tenant's ***written*** authorization to keep the security deposit then pursuant to s. 38(6) of the Act, the Landlord must return double the amount of the security deposit to the Tenant.

I find that the Landlord received the Tenant's forwarding address in writing on July 28, 2009 but that the tenancy did not end until July 31, 2009. I also find that the Landlord did not have the written consent of the Tenant or his co-Tenant to keep the security deposit. I further find that the Landlord did not return the Tenant's security deposit and did not make an application for dispute resolution to make a claim against the deposit until October 5, 2009. As a result, pursuant to s. 38(6) of the Act, the Landlord must return double the amount of the security deposit or **$700.00** to the Tenant.

RTB Policy Guideline #17 at p. 2 states that "unless the tenant has specifically waived the doubling of the deposit, either on an application for the return of the deposit or at the hearing, the arbitrator will order the return of double the deposit." Although the Tenant applied to recover only the original amount of the security deposit, I find that he did not waive reliance on s. 38(6) of the Act.

I find that the tenancy ended on July 31, 2009 when the Tenant removed most of his belongings from the rental unit. I also find that the Landlord gave the Tenant permission to take an additional day to do cleaning and allowed him to store his washer and dryer for a couple of days. However, I find that the Landlord did not agree to allow the Tenant to store any other of his belongings in the rental unit after July 31, 2009.

Although the Landlord argued that most of the Tenant's items that were left behind were garbage, I find based on the photographs provided by both parties that there were also personal items that would not reasonably be considered garbage. Section 25 of the Act says that a Landlord may dispose of a Tenant's abandoned property if it has a value of less than $500.00. However, I find that the articles in question were not abandoned as defined by s. 24 of the Regulations to the Act as I find that the Landlord knew that the Tenant would be returning to retrieve a washer and dryer. Consequently, the Landlord is responsible for the loss of those items.

The Tenant claimed that he could not retrieve his belongings on August 3, 2009 because he was working late, however the Landlord (who works in the same workplace) disputed this and argued that the Tenant worked a day shift that day and could have retrieved his belongings.

Section 7(2) of the Act says that a party who suffers damage must do whatever is reasonable to minimize their losses. I accept the evidence of the Landlord on this point and find that even if the Landlord was negligent in throwing the Tenant's belongings in the back yard, I find that the Tenant knew where they would be but did not take reasonable steps to retrieve them on August 3, 2009. Consequently, I find that the Tenant failed to mitigate his damages and is not entitled to recover damages for lost or damaged articles.

Landlord's Claim:

The Tenant admitted that he did not clean the rental unit at the end of the tenancy or remove garbage. The Tenant argued that he was unable to do so because he was working and the Landlord took back the keys to the rental unit on August 3, 2009. Section 37 of the Act says that a Tenant must leave a rental unit clean and undamaged (except for reasonable wear and tear) at the end of the tenancy. As the tenancy ended on July 31, 2009, I find that the Landlord was not required to give the Tenant an extension to clean. Consequently, I find that the Landlord is entitled to recover **$300.00** for cleaning expenses and **$153.00** for dump fees.

The Tenant also admitted that he was responsible for a damaged door and replacing oil in the furnace, and as a result, I award the Landlord **$163.51** for the door and **$71.25** for the oil. I find that the Tenant is not responsible for the cost of repairing a wall or fence. The Landlord admitted that it was the upstairs tenant that threw a microwave from the suite upstairs into the rental unit downstairs. Consequently, I find that it the damage to the wall was not caused by an act or neglect of the Tenant. I also find that there is a reasonable likelihood that the fence was suffering the effects of age or wear and tear and as a result, I further find that the Tenant is not responsible for that damage.

I also find that there is insufficient evidence that the Tenant was responsible for the loss of the Landlord's bicycle that was stored (unsecured) on the rental property after the tenancy ended and that part of her claim is dismissed. I find that the Landlord is entitled to recover her expenses for photographs and award her **$16.90**.

As the Parties' claims for reimbursement of their respective filing fees is offsetting, I make no award. In summary, the Tenant has made out a claim for $700.00 and the Landlord has made out a claim for $704.66. I order pursuant to s. 72 of the Act that the Parties' awards be offset with the result that the Tenant must pay the Landlord the difference of $4.66.

Conclusion

The application of the Tenant is allowed in part. The application of the Landlord is allowed in part. 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 15, 2009.

Dispute Resolution Officer