

Decision

Dispute Codes:

<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

This Dispute Resolution hearing was convened to deal with an Application by the tenant for the return of the \$250.00 security deposit and a refund of \$500.00 for rent wrongfully collected by the landlord for July 2009. The hearing also dealt with a cross application by the landlord for a monetary order for money owed or compensation for damage or loss under the Act for \$230.00

Both the landlord and tenant were present and gave testimony in turn.

Issues to be Decided for the Tenant's Application

The tenant was seeking to receive a monetary order for return of the security deposit retained by the landlord and the return of \$500.00 for July's rent which the landlord kept despite the fact that the tenant had left on June 30, 2009 with proper notice. 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 and pet damage 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 at the end of the tenancy?

- Whether the tenant is entitled to compensation for excessive charges imposed by the landlord in the form of rent paid for a month following the tenant's departure and a rent increase that was not compliant with the Act.

Issues to be Decided for the Landlord's Application

The landlord was seeking to receive a monetary order for cleaning and repairs.

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

- Whether the landlord is entitled to monetary compensation under section 67 of the *Act*. This determination is dependant upon answers to the following questions:
 - Has the landlord submitted proof that the amount being claimed is validly owed by the tenant to this landlord?
 - Has the landlord 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 that the costs were incurred due to the actions of the tenant that contravened the *Act* or agreement?
 - Has the landlord proven that the amount or value being claimed is justified?

The tenant has the burden of proof to establish that the deposit existed. The landlord has the burden of proof to show that compensation for damages and losses is justified.

Background and Evidence: Tenant's Claim

The parties testified that the tenancy began on June 30, 2007 with rent originally set at \$450.00 per month and a deposit of \$225.00. The landlord submitted a copy of a receipt showing that \$225.00 was paid as a deposit on June 15, 2007. However, according to the tenant, on January 1, 2009, the landlord raised the rent to \$500.00 per month and collected an additional security deposit of \$25.00. The tenant stated that, after vacating, he sent the landlord his forwarding address and requested the return of the \$250.00 deposit and the \$500.00 extra rent received for July.

The landlord admitted that the \$225.00 security deposit was not refunded but denied that an extra \$25.00 deposit was ever collected. The landlord had provided a copy of a receipt for the original security deposit dated June 15, 2007 verifying that \$225.00 security deposit was paid at that time. However, no further financial records or ledgers were submitted by the landlord to document any other transactions on the tenant's rental account and what payments were made over the course of the tenancy.

The landlord did acknowledge that a rent increase from \$450.00 to \$500.00 was imposed and that four month's notice were given to the tenant for the increase. The landlord stated that the increase occurred on April 1, 2009, not January 1, 2009 as claimed by the tenant. No documentation was submitted by the landlord to verify when the rent increase was issued or whether it was in compliance with the Act.

On April 30, 2009, the tenant gave written Notice to vacate effective May 31, 2009. A copy of this notice was in evidence. However, according to the tenant, the date given for vacating on the first notice was a mistake as the date to end the tenancy was a month earlier than he intended. Therefore the tenant signed another notice on May 8, 2009 to correct the mistake. The tenant believed that this second notice functioned to make the landlord aware that the tenant would be leaving on June 30, 2009. The second notice was written on the same paper just below the first notice.

A witness for the tenant, who was present when the second notice was signed, testified that no final end date was given, but it was assumed that the tenant was signing a one-month extension of the tenancy to the end of June. The witness testified that the landlord wrote the notice and the tenant signed it.

The landlord pointed out that the second notice did not provide a specific date that the tenant was to move out. The landlord testified that they were not aware that the tenant intended to leave on June 30, 2009 and believed the tenant was planning to stay indefinitely. The landlord stated that they were shocked upon discovering that the tenant was all packed up and in the process of moving out on June 30, 2009. The

landlord testified that by that time the tenant's July rent had already been paid by the ministry. The landlord testified that after the tenant had vacated, he attempted to re-rent the unit, but did not succeed in finding a new tenant until mid August.

The landlord's position was that the rent for July was owed to the landlord because of the fact that the tenant failed to give a month's written notice which would cause the landlord a loss of one month rent.

The tenant testified that he moved out on June 29, 2009 and on August 14, 2009, the tenant provided his forwarding address in writing requesting the return of the \$250.00 security deposit, as well as the return of the \$500.00 rent he felt was wrongfully collected by the landlord for the month of July 2009. The tenant was seeking a monetary order for the return of the security deposit and a refund for rent overcharged by the landlord totaling \$750.00.

Background and Evidence: Landlord's Claim

The landlord testified that the tenant left the unit in a deplorable state. The landlord was claiming the cost of \$75.00 for the carpet which the tenant had evidently removed. The landlord stated that the carpet was only a few months old when the tenancy started and was never properly cleaned by the tenant for the duration of the tenancy and had to be replaced. The landlord testified that the unit had also been freshly painted at the start of the tenancy but the tenant had left the walls soiled with stains and in need of repainting which cost \$125.00. The landlord is also seeking reimbursement for the \$80.00 cost of spraying the unit for a bedbug infestation which, according to the landlord, had repeatedly recurred due to the tenant "bringing the bedbugs in" from his former residence. The landlord testified that the \$225.00 deposit should be retained to partially compensate the landlord for these damages and losses.

Although the landlord did not include a claim for the \$500.00 loss of rent for the month of July 2009, being that it was already paid, the landlord disputed the tenant's claim to a refund. The landlord felt that these funds rightfully belonged to the landlord.

Accordingly the monetary claim in the landlord's application must be amended to the increased amount of \$730.00 in order to include a claim to keep the \$500.00 rent collected for July.

The tenant disputed the landlord's claims and testified that the infestation of bedbugs recurred because the problem was not properly dealt with by the landlord. This was also the reason that the tenant felt it necessary to remove the carpeting. The tenant alleged that the landlord had merely sprayed the unit with "Raid" rather than hiring professional exterminators. The tenant testified that prior to leaving, he purchased new carpeting at his own expense and left it for the landlord. However, the landlord stated that the new piece of carpet purchased by the tenant was useless as it was too small to replace the wall-to-wall carpeting that had originally been in the unit.

The tenant testified that when he moved in, the residence was not clean and was in poor repair. The tenant confirmed that no move-in or move-out inspections were done.

Analysis:

I find that the tenancy agreement submitted by the landlord purporting to be for a fixed term tenancy is not compliant with the Act and that the document is not sufficiently clear enough to be of use in determining the terms of the tenancy. However, I find as a fact that these two parties were in a landlord and tenant relationship and as such the provisions contained in the Residential Tenancy Act will apply to this situation.

Security Deposit

I find that, on a balance of probabilities the tenant paid a total security deposit of \$250.00 and did provide a forwarding address to the landlord on August 14, 2009.

Section 38 of the Act deals with the rights and obligations of landlords and tenants in regards to the return of security deposit and pet damage deposit. Section 38(1) states that within 15 days of the end of the tenancy and receiving the tenant's forwarding address a landlord must either: repay, as provided in subsection (8), any security

deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations; or make an application for dispute resolution claiming against the security deposit or pet damage deposit.

I find that the landlord was in possession of the tenant's security deposit held in trust on behalf of the tenant at the time that the tenancy ended. I find that because the tenancy ended and the forwarding address was given to the landlord, under the Act the landlord should either have returned the deposit or made an application for dispute resolution within the following 15 days which would fall around the end of August 2009. I find that the landlord applied on September 14, 2009, well beyond the deadline.

Section 38(6) If a landlord does not act within the above deadline, the landlord; (a) may not make a claim against the security deposit or any pet damage deposit, and; (b) must pay the tenant double the amount of the security deposit.

Based on the above, I find that the tenant is entitled to receive double the \$250.00 retained by the landlord equalling \$500.00, plus interest of \$5.25 interest on the original deposit paid for a total monetary entitlement of \$505.25.

Damages

In regards to an Applicant's right to claim damages from the another party, Section 7 of the Act states that if a landlord or tenant fails to comply with the Act, the regulations or tenancy agreement, 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 authority to determine the amount and order payment under the circumstances.

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 actual amount required to compensate for the claimed loss or to rectify the damage.
4. Proof that the claimant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage

In this instance, the burden of proof is on the claimant to prove the existence of the damage/loss and that it stemmed directly from a violation of the agreement or a contravention of the Act on the part of the respondent. .

Claims for July 2009 Rent

In regards to the \$500.00 collected and retained by the landlord for the month of July 2009, I find that while the landlord was not automatically entitled to collect rent for a period of time after the tenancy had ended, the tenant must share responsibility for the occurrence. Section 45 of the Act allows a tenant to end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date 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. However, the Act also requires that a notice to end a tenancy given under this section must comply with section 52 *[form and content of notice to end tenancy]*. Section 52 of the Act states that in order to be effective, a written notice to end a tenancy must

- (a) be signed and dated by the tenant giving the notice,
- (b) give the address of the rental unit,
- (c) state the effective date of the notice,

I find that the tenant did not prove that he had given proper written notice to move out. The second notice signed on May 8, 2009 did not contain sufficient information about the actual date that the tenancy was going to end. Moreover, I find that based on the tenant's own testimony, he knew in May 2009, that the tenancy would end on June 30, 2009 and yet he failed to inform the Ministry not to issue a rent payment cheque to the landlord for July. Given the above, I find that the tenant was not entitled to be refunded the \$500.00 rent for July. Having found that the tenant did not provide adequate notice to move, I find that the landlord's resulting loss of rent for the month of July would justify one-month compensation, had it not been already paid. I therefore find that this portion of the tenant's claim is dismissed.

Rent Increase Claim

In regards to the rent increase of \$50.00 per month I note that the parties disagreed as to the date this was implemented. The tenant alleged it was imposed by the landlord on January 1, 2009, which would be for a 7-month period including July. The landlord stated that it was implemented on April 1, 2009, for 4 months at the end of the tenancy. I find that the increase was not in compliance with section 41 of the Act and the Regulations. Accordingly I find that the tenant is entitled to be reimbursed \$300.00 for six months of overpaid rent that was collected in violation of the Act.

Landlord's Monetary Claim – Cleaning and Repairs

In regards to the landlord's claim for cleaning and repairs, I find that, whether or not the landlord incurred expenditures to clean and repair the residence, the landlord was not able to sufficiently prove that the damage to, and condition of, the unit resulted solely from the actions of the tenant in violation of the Act. I find that no move-in or move-out condition inspection reports were completed as required under sections 23 and 25 of the Act and , without these key pieces of evidence being submitted into evidence, it is not possible to accurately assess the before and after condition of the rental unit.

In regards to the damage and costs resulting from the bedbugs, the tenant stated that he had removed the carpet because of a serious and repeated bedbug infestation. I find that pest control is the responsibility of the landlord under the Act and in order to be effective, must be conducted by a licensed professional in the field. Under the Act, a tenant is not liable for the costs of the exterminator.

I find that, except for \$500.00 July rent, which the landlord is entitled to keep for losses, none of the landlord's other monetary claims has successfully met the test for damages.

Conclusion

Based on the testimony and evidence presented during these proceedings, I find that the tenant is entitled to a total monetary claim of \$805.25, comprised of \$500.00 for double the security deposit, \$5.25 interest, and \$300.00 as refund for an illegal rent increase. This order must be served on the Respondent and if unpaid may be filed in the Supreme Court, (Small Claims), may be enforced as an order of that Court.

The landlord's application is hereby dismissed in its entirety without leave to reapply.

December 2009

Date of Decision

Dispute Resolution Officer