



Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing and Social Development

Decision

Dispute Codes:

MNDC

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant for a monetary order for money owed or compensation for damage or loss under the Act for the equivalent of one month rent under section 51(1) applicable when a Two-Month Notice to End Tenancy for Landlord's Use under section 49, has been issued. The tenant was also seeking the equivalent of two month's rent pursuant to a written contract between the tenant and the landlord that the parties had signed on October 12, 2009. The total claim was for \$5,360.00

The tenant testified that the landlord had been served by delivering the Notice of Hearing in person to an agent of the landlord at the address provided. However, the landlord did not appear.

Issue(s) to be Decided

The issues to be determined based on the testimony and the evidence is whether the landlord ended the tenancy for landlord's use and if so:

- Was the tenancy ended in compliance with the Act pursuant to section 49(7) with adequate notice of at least two months effective the day before the day rent was due pursuant to section 49(2)?

- Was the tenant credited with the equivalent of one month compensation pursuant to section 51(1) of the Act?
- Did the landlord comply with the contract in which the landlord also agreed to pay the tenant the equivalent of two month's rent in exchange for vacating early and if so, were these funds paid to the tenant?

The burden of proof is on the tenant in regards to proving that the Landlord's notice or actions did not comply with the Act or agreement and that the money is owed.

Background and Evidence

The tenancy began on October 1, 2009 and was ended on October 31, 2009. The tenant testified that a copy of the written tenancy agreement was never given to the tenant.

The tenant testified that the landlord had issued a Two-Month Notice to End Tenancy for Landlord's Use back-dated to September 30, 2009 with an effective date of November 30, 2009 being that the property was sold. A copy of this Notice was submitted into evidence. The tenant testified that just after the tenancy had begun, the landlord sought an agreement with the tenants to have them vacate earlier and the parties then entered into a written agreement to terminate the tenancy with compensation to the tenant.

Submitted into evidence by the applicant/tenant in support the application was a copy of this hand-written contract dated October 12, 2009 which stated as follows:

*"THIS CONTRACT IS STATING THAT BOTH PARTIES AGREED TO:
PAYMENT OF OUR FIRST TWO MONTHS RENT IN OUR NEW PLACE –
EQUIVALENT TO OUR CURRENT RENT OF \$1,650.00 – BY (LANDLORD)
RETURN OF DAMAGE DEPOSIT , IN FULL AS PER INSPECTION BY
(LANDLORD)
PAYMENT IN FULL OF UTILITIES, CABLE WITH PROOF OF BILLS BY THE
TENANTS."*

The contract was signed by the landlord and the tenants.

The tenant testified that the landlord returned the \$825.00 security deposit in full. The tenant testified that the landlord still owed \$1,650.00 for the one-month compensation and \$3,300.00 for the further equivalent of two months rent. The tenant testified that they were expecting these funds to be sent along with the invoices from the utility companies for the month of October 2009 for the tenant's payment.

However a statement from the landlord dated November 18, 2009 was received by the tenant along with a cheque for \$962.00.

The landlord had written the following:

"Below is the final breakdown of the legal obligation I have with respect to the move. When you do your research you will find it all to be to the letter as per the law.

1 Months Rent 1,660.00

Less below deduction

2 months of unpaid utilities.

<i>Cable</i>	<i>55.00 X 2</i>	<i>110.00</i>
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<i>Hydro</i>	<i>108.00 X 2</i>	<i>126.00</i>
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<i>Gas</i>	<i>186.00 X 2</i>	<i>372.00</i>
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<i>Total</i>		<i>698.00</i>
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<i>Balance</i>	<i>962.00"</i>	
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The tenant testified that the landlord had never provided any invoices for the utilities and furthermore, the tenancy was only one month long. The tenant did not agree to the landlord's calculations and deductions from the \$1,660.00. The tenant also testified that the gas was cut off for 5 days during their tenancy due to payment issues predating their occupancy.

Moreover, the landlord failed to pay the additional two-months owed under the contract he had signed and the tenant's position was that they were owed \$4,950.00, but only received \$962.00. The amount still outstanding was \$3,988.00.

Analysis

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 regulations or their 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 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 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 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, that being the tenant, 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 landlord. Once that has been established, the claimant must then provide evidence to verify the actual monetary amount of the loss or damage. Finally it must be proven that the claimant reasonable steps to address the situation and to mitigate the damage or losses that were incurred

I find that in this case, the tenant has clearly established that there was a breach of the contract by the landlord by refusing to pay an amount equivalent to the two-months as promised. Under the Act the tenant was entitled to a full two-month's notice which, if issued after their tenancy began would have actually entitled the tenant to stay in the rental unit until the end of December 2009. The parties entered an agreement where-in the tenant was to forfeit that right in exchange for monetary compensation.

In regards to the deductions for utility costs from the one-month equivalent, I find that there was a further breach of the contract and the Act. I find that the landlord was not entitled to make utility cost deductions because section 46 (6) of the Act, states that when a tenancy agreement requires the tenant to pay utility charges to the landlord, the landlord may only treat the unpaid utility charges as unpaid rent if these utility charges are unpaid more than 30 days after the tenant is given a written demand for payment of them. Under the contract, the written demand, in this instance should have included copies of the actual invoices issued by the utility companies. There was no indication that the landlord had ever furnished the invoices nor that the landlord had ever issued the written demand 30 days prior to deducting the alleged costs. Therefore, I find that there was no valid basis under the Act or agreement for the landlord's utility claim and associated deductions. Finally I find that the alleged utility costs incorrectly pertained to a 2-month period when the tenancy had only lasted one month.

Given the above I find that the tenant is entitled to compensation of \$4,098.00 consisting of \$698.00 for the portion of the one-month compensation wrongfully withheld, \$3,300.00 for the two month-equivalent and \$100.00 reimbursement for the cost of the application.

Conclusion

Based on the testimony and evidence, I hereby issue a Monetary Order in favour of the tenant in the amount of \$4,098.00. This Order must be served on the landlord and may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

March 2010

Date of Decision

Dispute Resolution Officer