

DECISION

Dispute Codes MNSD MNDC

Introduction

This hearing dealt with an Application for Dispute Resolution by the Tenant to obtain a Monetary Order for the return of the security deposit and for money owed or compensation for damage or loss under the Act, Regulation, or tenancy agreement.

Service of the hearing documents, by the Tenant to the Landlord, was done in accordance with section 89 of the *Act*, sent via registered mail on November 24, 2009. Mail receipt numbers were provided in the Tenant's evidence. The Landlord is deemed to be served the hearing documents on November 25, 2009, the fifth day after they were mailed as per section 90(a) of the *Act*.

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

Issues(s) to be Decided

Is the Tenant entitled to a Monetary Order a) for the return of the security deposit, and b) for money owed or compensation for damage or loss under the Act, Regulation, or tenancy agreement pursuant to sections 38 and 67 of the *Residential Tenancy Act*?

Background and Evidence

The Tenant confirmed that he did not send copies of his documentary evidence to the Landlord, prior to the hearing.

The Tenant testified that the Landlord, the Tenant's father, rents the upper floor of a house which has four bedrooms, three which the Landlord rents out. The Tenant confirmed that his father, the Landlord, does not own this house.

The Tenant advised that he moved into the rental unit on August 1, 2009 based on a verbal month to month tenancy agreement for \$480.00 in monthly rent. The Tenant argued that a security deposit of \$240.00 was paid directly to the Landlord by the Ministry of Housing and Social Development (the Ministry).

The Tenant testified that he had a dispute with his Landlord on August 29, 2009, that his Landlord was bothering him, there were threats made, the police were called, and the Tenant was evacuated from the rental unit and not allowed to move back in.

The Tenant referred to the registered mail receipt dated October 21, 2009, and advised that this was the envelope that he sent his forwarding address in to the Landlord, along with copies of fact sheets for the return of his security deposit.

The Landlord signed into the teleconference hearing nine minutes late stating that he fell asleep while waiting to call in. The Landlord testified that the Tenant failed to pay him rent for August 2009 or September 2009 and the Tenant, his son, owes the Landlord “bunches and bunches of money”.

The Landlord confirmed the security deposit of \$240.00 was paid directly to him by the Ministry and no money was paid to him by the Tenant. The Landlord began to slander the Tenant during his testimony and when I told the Landlord to keep his testimony to the facts of the tenancy the Landlord became belligerent with me, at which point I informed the Landlord if he continued with this behaviour I would disconnect him from the hearing. The Landlord continued to display rude and belligerent behaviour so I disconnected him from the hearing.

Analysis

The Landlord continued to display rude and belligerent behaviour after being given directions by me to stop. The Landlord was disconnected from the hearing in accordance with section 8.7 of the *Residential Tenancy Branch Rules of Procedure* which provides that a person who does not comply with the Dispute Resolution Officer's direction may be excluded from the dispute resolution proceeding and the Dispute Resolution Officer may proceed with the dispute resolution proceeding in the absence of the excluded party.

The Tenant confirmed that he did not provide the Landlord with copies of his evidence, in contravention of section 3.1 of the *Residential Tenancy Branch Rules of Procedure*. Considering evidence that has not been served on the other party would create prejudice and constitute a breach of the principles of natural justice. Therefore as the respondent Landlord has not received copies of the Tenant's evidence I find that the Tenant's evidence cannot be considered in my decision. I did however consider the Tenant's testimony.

The testimony from both parties confirms there was a security deposit of \$240.00 paid to the Landlord on or before August 1, 2009. The Landlord has not returned the security deposit, does not have an Order authorizing the Landlord to retain the security deposit, and no application has been filed by the Landlord for dispute resolution to keep the security deposit.

The evidence supports that the Tenant provided the Landlord with his forwarding address on October 21, 2009, via registered mail. The Landlord is deemed to have

received the registered mail on October 26, 2009, five days after it was mailed in accordance with section 90 of the Act.

Section 38(1) of the *Act* stipulates that if within 15 days after the later of: 1) the date the tenancy ends, and 2) the date the landlord receives the tenant's forwarding address in writing, the landlord must repay the security deposit, to the tenant with interest or make application for dispute resolution claiming against the security deposit. In this case the Landlord was required to return the Tenant's security deposit in full or file for dispute resolution no later than November 10, 2009.

Based on the above, I find that the Landlord has failed to comply with Section 38(1) of the *Act* and that the Landlord is now subject to Section 38(6) of the *Act* which states that if a landlord fails to comply with section 38(1) the landlord may not make a claim against the security deposit and the landlord must pay the tenant double the security deposit. I find that the Tenant has succeeded in proving his loss and I approve his claim in the amount of \$480.00.

In the presence of disputed testimony about when or how much rent has been paid, I find the Tenant has failed to prove that he prepaid September 2009 rent, a period that he did not occupy the rental unit. Therefore, I dismiss the Tenant's claim for return of \$480.00 of September 2009 rent, without leave to reapply.

Conclusion

A copy of the Tenant's decision will be accompanied by a Monetary Order for **\$480.00**. The order must be served on the respondent Landlord and is enforceable through the Provincial Court as an order of that Court.

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: March 30, 2010.

Dispute Resolution Officer