



# Dispute Resolution Services

Residential Tenancy Branch  
Ministry of Housing and Social Development

## Decision

### Dispute Codes:

CNL, MNDC, OLC, RP, LRE, LAT, FF

### Introduction

This hearing was convened to deal with an Application for Dispute Resolution by the tenant to cancel a Two Month Notice to End Tenancy for Landlord's Use. The hearing was also to deal with a request for the return of double the security and pet damage deposits, monetary compensation for loss of peaceful enjoyment and devalued tenancy, compensation for the equivalent of one month rent under section 51 of the Act, an order to compel the landlord to comply with the Act, an order to force the landlord to complete repairs to the property for health and safety reasons, an order to suspend or set conditions on the landlord's right to enter, an order to allow the tenant to change the locks and reimbursement for the cost of filing the application.

Both parties appeared and gave testimony.

At the outset of the hearing, the parties advised that the tenant moved out of the unit at the end of February 2010. Therefore the portions of the tenant's application relating to the request to cancel the Two Month Notice to End Tenancy for Landlord's Use, the request for an order to compel the landlord to comply with the Act, to force the landlord to complete repairs to the property and to suspend or set conditions on the landlord's right to enter have all been rendered immaterial to these proceedings. The only remaining issues to be determined was the request for the return of double the security and pet damage deposit, the request for monetary compensation for loss of peaceful enjoyment and devalued tenancy, the request for compensation for the equivalent of one month rent under section 51 of the Act and the cost of filing.

### **Issue(s) to be Decided**

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

- Whether the tenant is entitled to the return of double the security deposit and pet damage deposit under section 38 of the Act.
- Whether the tenant is entitled to monetary compensation under section 67 of the Act for damages or loss in the form of a retroactive rent abatement for devalued tenancy.
- Whether the tenant is entitled to the equivalent of one month rent under section 51 of the Act

The burden of proof is on the applicant to prove all of the claims and requests contained in the tenant's application.

### **Preliminary Issue**

At a previous hearing held on December 23, 2009, the tenant's application for monetary compensation for repair costs, an order that the landlord complete repairs, and an order that the landlord comply with the Act were all dealt with and by agreement of the parties, the tenant received a monetary order against the landlord for the cost of repairs and a commitment by the landlord to perform stated repairs by January 15, 2010.

The tenant testified that the landlord did not do the repairs and failed to pay the previously awarded monetary order. In addition to the issues before me today, the tenant's application for the hearing also included a request for an order that the landlord pay the previous monetary order.

I find that I am unable to consider the matter of a residual dispute over payment of the previous monetary issued on December 24, 2009. The tenant's claim was already heard and determined. And I found that , the matter could not be reheard again, as the principle of res judicata would apply. This means that the matter has already been

decided and therefore may not be revisited. *Section 77* of the *Act* states that, except as otherwise provided in the *Act*, a decision or an order of the director is final and binding on the parties. No subsequent determination can be made on a matter already decided. However, the tenant is at liberty to pursue collection of this debt through other legal avenues.

However, I find that the tenant did not previously raise the specific issues that are under dispute at this time. There was no previous determination made in regards to a retroactive rent abatement for devalued tenancy due to the alleged condition of the unit and the purported loss of quiet enjoyment. I also find that the matter of the security deposit and the issue of compensation under section 51 were never previously determined at the earlier hearing. Therefore, I find that I have the authority and jurisdiction to consider these matters in the tenant's application.

### **Background and Evidence**

The tenancy began April 1, 2008 with rent set at \$825.00 per month and, according to the tenant a security deposit of \$412.00 was paid and a pet damage deposit of \$412.00 was also paid. This amount was disputed by the landlord who testified that the tenant paid \$400.00 security deposit and \$100.00 pet damage deposit. The tenant also testified that \$275.00 deposit for security keys was paid to the condominium corporation and after the tenancy ended the keys were returned and a refund was due.

The tenant testified that on January 22, 2010, a Two-Month Notice to End Tenancy for Landlord Use with a vacancy date of March 31, 2010 was served after which the tenant found other accommodation and moved out of the unit as of February 28, 2010. At this time a written forwarding address was given to the landlord.

The tenant testified that none of the deposits were never returned and the tenant was seeking a refund of double the security and pet damage deposits totaling \$1,648.00 and \$275.00 for the key deposits. The tenant was also seeking the equivalent of one month compensation, in the amount of \$825.00, to which the tenant was entitled to under

section 51 of the Act after a Two-Month Notice for Landlord's Use has been issued pursuant to section 49 of the Act.

In addition, the tenant was seeking compensation for a devalued tenancy due to the condition issues that she endured for the duration of the tenancy due to the landlord's refusal to complete repairs and maintenance. This included not being able to use the oven due to smoke, an inefficient refrigerator that did not keep the food cold enough, holes in the drywall and problems with the carpeting. The tenant also sought compensation for the loss of quiet enjoyment due to the landlord entering the suite at will and leaving telephone messages of a disturbing nature. The tenant was claiming an abatement of \$1,000.00.

The landlord testified that the security deposit of \$400.00 and the \$100.00 pet damage deposit were retained to compensate for damage to the unit by the tenant and the landlord was prepared to argue and present evidence of the damage claims despite not having filed any application or cross application.

The landlord stated that the compensation under section 51 was also not paid to the tenant as he was waiting for this hearing to discuss the matter.

In addition, the landlord disputed the tenant's testimony in regards to the claims of devalued tenancy allegedly due to the condition of the unit and the purported loss of quiet enjoyment. The landlord testified that the matter of the stove was not brought up until August 2009 and was repaired. The landlord testified that the holes in the drywall were minor and were there from the start of the tenancy at which time the tenant had indicated that this was not of any concern. The landlord testified that the tenant refused access to do some of the repairs and others were already completed. The landlord stated that he now resides in the tenant's former suite and everything functions fine. In regards to the allegation that he had been entering the suite without prior notice, the landlord stated that this only occurred once during the tenancy.

### **Analysis – Security Deposit**

In regards to the return of the security deposit and pet damage deposit, I find that section 38 of the Act is clear on this issue. Within 15 days after the later of the day the tenancy ends, and the date the landlord receives the tenant's forwarding address in writing, the landlord must either repay the security deposit or pet damage deposit to the tenant with interest or make an application for dispute resolution claiming against the security deposit or pet damage deposit.

The Act states that the landlord can only retain a deposit if the tenant agrees in writing the landlord can keep the deposit to satisfy a liability or obligation of the tenant, or if, after the end of the tenancy, the director orders that the landlord may retain the amount.

I find that the tenant did not give the landlord written permission to keep the deposit, nor did the landlord make application for an order to keep the deposits.

Section 38(6) provides that If a landlord does not comply with the Act by refunding the deposit owed or making application to retain it within 15 days, the landlord may not make a claim against the security deposit or any pet damage deposit, and must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

According to the finding made at the previous hearing held on December 23, 2009, the tenant's security deposit was \$400.00 and the pet damage deposit was \$100.00 for a total amount of \$500.00. I find that these funds being held in trust for the tenant were wrongfully retained by the landlord. I find that the tenant is therefore entitled to compensation of double the deposit, amounting to \$1,000.00 plus \$5.64 interest on the original deposit totalling \$1,005.64.

In regards to the key deposits of \$275.00, I find that these funds were evidently paid directly to the condominium corporation and it is not clear who must repay the tenant. Moreover, the tenant did not submit sufficient evidence to confirm payment and to

enable a determination on this matter. Accordingly, the portion of the tenant's application relating to the return of the \$275.00 key deposits must be dismissed.

### **Analysis – Compensation under Section 51**

A copy of the Two-Month Notice issued by the landlord was in evidence and I find that section 51 (1) states that a tenant who receives a notice to end a tenancy under section 49 [*landlord's use of property*] is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement. I therefore find that the tenant is entitled to receive compensation in the amount of \$825.00.

### **Analysis - Monetary Compensation for Damages**

The tenant was requesting monetary compensation or rent reduction for the devaluation of the tenancy due to the landlord's failure to repair and maintain the unit and because of disruptions by the landlord.

Section 7 of the Act states that if a landlord or tenant does not comply with this Act, the regulations or their 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 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 has a burden of proof to establish 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 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 tenant to prove a violation of the Act and a corresponding loss.

I find that section 32 of the Act imposes responsibilities on both the landlord and the tenant for the care and cleanliness of a unit. A landlord must provide and maintain residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law, having regard to the age, character and location of the rental unit to make it suitable for occupation by a tenant. A tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access.

Section 27 of the Act states that a landlord must not terminate or restrict a service or facility if the service or facility is essential to the tenant's use of the rental unit as living accommodation, or qualifies as a material term of the tenancy agreement. In some cases a landlord may terminate or restrict a service or facility, as long as it is not essential to the tenant's use of the rental unit as living accommodation and as long as the service or facility was not considered to be a material term of the tenancy. In such cases, the landlord must give 30 days' written notice of the termination or restriction in the approved form and also must reduce the rent in an amount that is equivalent to the reduction in the value of the tenancy agreement resulting from the termination or restriction of the service or facility.

In this instance I find that there were deficiencies in the condition of the unit prompting the tenant to arrange for repairs herself, and to live with certain condition issues that

were never properly addressed. In regards to the allegation of repeated intrusions by the landlord, I find that the tenant's disputed verbal testimony was not sufficient to establish that the landlord had repeatedly violated the Act in this regard.

Given the above, I find that the tenant is entitled to a retroactive rent abatement in the amount of \$300.00.

The total monetary compensation to which the tenant is entitled is \$2,180.64 comprised of \$1,000.00 representing double the security deposit \$5.64 interest on the original deposit, \$825.00 compensation under section 51, \$300.00 for loss of enjoyment and the \$50.00 paid for the application.

### **Conclusion**

Based on the testimony and evidence discussed above, I hereby issue a monetary order in favour of the tenant in the amount of \$2,180.64. This order must be served on the landlord in person or by registered mail and can be enforced in Small Claims court.

The remainder of the tenant's application is dismissed in its entirety without leave.

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March 2010

Date of Decision

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Dispute Resolution Officer