

DECISION

Dispute Codes CNC MNSD MNDC FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Tenant to cancel a notice to end tenancy for cause and to obtain a Monetary Order for money owed or compensation for damage or loss under the Act, regulation, or tenancy agreement, for the return of double her security deposit, and to recover the cost of the filing fee from the Landlord for this application.

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 February 2, 2010. The Landlord confirmed receipt of the hearing package.

The Landlord, Property Manager, and the Tenant appeared, acknowledged receipt of evidence submitted by the other, 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 an Order to cancel the notice to end tenancy under section 47 of the *Residential Tenancy Act*?

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

Background and Evidence

The undisputed testimony was the fixed term tenancy began on December 1, 2008, and switched over to a month to month tenancy after the end of the fixed term on December 31, 2009. Rent was payable on the first of each month in the amount of \$900.00 and the Tenant paid a security deposit of \$450.00 on November 15, 2008. The tenancy ended when the Tenant vacated the rental unit on February 26, 2010. The rental unit consisted of one side of a duplex with both sides of the duplex having different owners.

The Tenant testified and confirmed that she vacated the rental unit after receiving the “eviction notice” and confirmed she was withdrawing her request to cancel the notice to end tenancy.

The Tenant stated that she should be compensated for having to move in a hurry. The Tenant argued that she had a rushed move because she was leaving the country on a mission, the roof was leaking, plus the Landlord did not have insurance on the building, and as a result, could not have a tenant occupy the unit. The Tenant is seeking \$1,200.00 which is comprised of \$300.00 in hydro costs she estimated that she had to pay during the restoration of the rental unit, after the roof leaked and \$900.00 which is equivalent to one month's rent to cover her costs for cleaning the unit and moving. The Tenant confirmed that she did not submit copies of receipts in support of her claim.

The Landlord and Property Manager testified that once they knew of the leaky roof problem they acted responsibly in getting the roof repaired in a timely manner. The Landlord confirmed that she paid to have the entire roof of her side of the duplex replaced by a professional roofer in early to mid December 2009 and that they have been dealing with the owner and her son of the other side of the duplex trying to encourage them to have their roof repaired.

The Property Manager argued that they informed the Tenant from the onset when they were first alerted that there was a potential problem pending with the building insurance. The Property Manager testified that he kept the Tenant informed throughout the entire process and also advised the Tenant to check to see how this situation affected her content insurance. The Property Manager argued that they even offered the Tenant the opportunity to continue her tenancy if she was willing to accept responsibility for the unit in case of a loss.

The Landlord referred to her documentary evidence which included, among other things, a summary of the past events, copies of emails and letters issued by the insurance company cancelling the insurance, a copy of the title search proving the other half of the duplex is owned by someone other than the Landlord, and a copy of the tenancy agreement, in support of her testimony.

The Tenant testified that she made the choice to move and settle her things in her new place before leaving the country on March 5, 2010. The Tenant stated that since vacating the rental unit she has been back to check for mail and saw there was furniture in the rental unit which appeared to be occupied by someone.

The Landlord and Property Manager argued that they have someone who has agreed to put some articles in the rental unit, who agreed to check on the unit and stay overnight once in a while to ensure the safety of the property. They argued that they were worried about possible vandalism if they left the unit empty so when this acquaintance agreed to store some furniture in the unit they agreed. The Landlord confirmed that no money is

changing hands in relation to this verbal agreement and that the acquaintance is not cooking in the rental unit for safety reasons as there is no fire insurance on the property.

The Landlord confirmed that she has not returned the security deposit to the Tenant because she was awaiting the outcome of today's hearing.

Analysis

All of the testimony and documentary evidence was carefully considered.

Section 7(1) of the Act provides 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 the damage or loss which results. That being said, section 7(2) also requires that the party making the claim for compensation for damage or loss which results from the other's non-compliance, must do whatever is reasonable to minimize the damage or loss.

The party applying for compensation has the burden to prove their claim and in order to prove their claim the applicant must provide sufficient evidence to establish the following:

1. That the Respondent violated the Act, Regulation, or tenancy agreement; and
2. The violation resulted in damage or loss to the Applicant; and
3. Verification of the actual amount required to compensate for loss or to rectify the damage; and
4. The Applicant did whatever was reasonable to minimize the damage or loss

With respect to the Tenant's claim for compensation of \$900.00 for loss relating to moving expenses, and cleaning, plus \$300.00 for an estimated cost of hydro during the restoration process, there is no evidence before me to prove the Tenant's actual costs or that the Landlord has violated the *Residential Tenancy Act*. Based on the aforementioned I find the Tenant has failed to prove the test for damage or loss, as listed above, and I hereby dismiss her claim for \$1,200.00.

The evidence supports the tenancy ended on approximately February 27, 2010, and that the Tenant provided the Landlord a forwarding address, in writing, on approximately March 3 or March 4, 2010.

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 March 19, 2010.

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 and pet deposit and the landlord must pay the tenant double the security deposit. I find that the Tenant has succeeded in proving the test for damage or loss as listed above and I approve her claim for the return of double the balance owed of her security deposit plus interest.

I find that the Tenant has partially succeeded with her application therefore I award recovery of the \$50.00 filing fee.

Monetary Order – I find that the Tenant is entitled to a monetary claim as follows:

Double the Security Deposit 2 x \$450.00	\$900.00
Interest owed on the Security Deposit of \$450.00 from November 15, 2008 to April 28, 2010	0.87
Filing Fee	<u>50.00</u>
TOTAL AMOUNT DUE TO THE TENANT	\$950.87

Conclusion

I HEREBY FIND in favor of the Tenant's monetary claim. A copy of the Tenant's decision will be accompanied by a Monetary Order for **\$950.87**. 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: April 28, 2010.

Dispute Resolution Officer