

DECISION

Dispute Codes:

ERP, CNR, MNSD, LRE, LAT, MNDC, RP, RR, OLC, PSF

Introduction

This hearing dealt with an application by the tenant pursuant to the *Residential Tenancy Act*, for an order seeking landlord's action to comply with the *Act*, conduct emergency repairs, provide services, allow a rent reduction, return the security deposit and pay compensation to the tenant. The tenant also applied to cancel the notice to end tenancy, to suspend conditions on the landlord's right to enter the rental unit and to authorize the tenant to change locks.

The tenancy ended on June 18, 2010 and therefore a major portion of the tenant's application is moot. The only portion of the tenant's application that is relevant and will be heard is his application for a monetary order for the return of the security deposit and for compensation. Both parties attended the hearing and were given full opportunity to present evidence and make submissions.

Issues to be decided

Is the tenant entitled to compensation for the lack of clean accommodation? Is the tenant entitled to compensation for labour to paint the unit, lost wages and moving costs? Was the landlord negligent in his responsibilities to take action on the tenant's complaint?

Background and Evidence

The tenancy started on May 02, 2010 for a fixed term of one year. The monthly rent is \$1,100.00. On May 08, 2010, the tenant paid the security deposit of \$550.00.

The tenant testified that he did a move in inspection with the landlord and a report was completed. The previous tenants had not cleaned the unit well and this was discussed during the inspection. The landlord stated that the tenants checked out the house for approximately 45 minutes before they signed the fixed term lease. The landlord agreed

to deduct \$200.00 off the first month's rent as compensation for cleaning the unit. The tenant accepted the compensation.

The tenant requested that the unit be painted. Both parties agreed that they made an arrangement whereby the landlord would cover the cost of paint and the tenant would provide the labour at no cost to the landlord.

The tenant stated that after he started cleaning, he realized that the unit was a lot dirtier than he thought it was. He stated that there was a rotting smell inside the unit and he informed the landlord right away. The landlord denied having heard from the tenant about the condition of the unit. On May 27, the tenant wrote a letter to the landlord informing him of the problems in the house. The tenant asked the landlord to fix the washing machine and the toilet, replace the carpet in the living room, hallway and stairwell and replace the stove. He also asked the landlord to fix the floor of the porch and have the windows properly sealed.

The landlord replied on the same day and visited the rental unit on the next day to take care of the problems. The landlord installed a washer but it did not work properly. The tenant informed the landlord about what part needed to be replaced and agreed to replace the part. The landlord mailed the part to the tenant who installed it. The tenant stated that he was without laundry for five days after he informed the landlord.

The tenant stated that the odours and dirt in the unit made his family members sick and his spouse missed work for two days resulting in a wage loss of \$60.00. The tenant stated that the living conditions were so bad that it rendered his tenancy agreement "null and void" and therefore he did not pay rent for June.

On June 02, the landlord served the tenant with a ten day notice to end tenancy. The tenant moved out on June 18 without paying rent for June and without providing the landlord his forwarding address in writing. The tenant stated that due to the condition of the unit, he had to move out and felt that the landlord should pay for his moving expenses in the amount of \$1,100.00. The tenant also stated that since he did not stay

for the full term of the tenancy agreement, he should be reimbursed for his labour to paint the unit in the amount of \$2,500.00. The tenant had also claimed for the return of the rent he had paid for May, but withdrew this portion of his claim during the hearing.

The tenant is claiming the following:

1.	Damage Deposit	\$550.00
2.	Laundry	\$40.00
3.	Lost wages	\$60.00
4.	Moving costs	\$1,100.00
5.	Painting	\$2,500.00
	Total	\$4,250.00

Analysis

Section 38(1) of the Act provides that the landlord must return the security deposit or apply for dispute resolution within 15 days after the later of the end of the tenancy and the date the forwarding address is received in writing.

Based on the sworn testimony of both parties, I find that the tenant did not give his forwarding address in writing, to the landlord. However during this hearing the landlord was provided with the address and has 15 days from the receipt of this decision to return the security deposit in full to the tenant or apply for dispute resolution if he wants to retain all or part of this deposit.

The landlord has an obligation to repair and maintain the residential property. I am satisfied that the tenant was deprived of the use of the laundry for at least five days and therefore, I find that the tenant has established a claim for \$40.00 towards the cost of doing laundry for the time that the machine was out of order.

It must be emphasized that in order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof.

The claimant bears the burden of establishing each claim on the balance of probabilities. The claimant must 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 other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. Finally the claimant must show that reasonable steps were taken to address the situation and to mitigate the damage or losses that were incurred.

The tenant has not filed any evidence to support his claim for lost wages or moving costs. Therefore the tenant's claim for a \$1,100.00 for moving costs and \$60.00 for wages is dismissed. In addition the tenant entered into an arrangement with the landlord to provide his labour at no cost to the landlord, to paint the unit if the landlord paid for the cost of the paint. The tenant agreed that he had made this arrangement with the landlord and is therefore not entitled to claim \$2,500.00 for his labour.

Overall the tenant has established a claim of \$550.00 for the return of the security deposit and \$40.00 for the loss of the use of the laundry. I grant the tenant an order under section 67 of the *Residential Tenancy Act*, for \$590.00. This order may be filed in the Small Claims Court and enforced as an order of that Court

Conclusion

I grant the tenant a monetary order in the amount of **\$590.00**.

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: August 04, 2010.

Dispute Resolution Officer