

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 all or part 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 April 13, 2010. Mail receipt numbers were provided in the Tenant's evidence. The Landlord is deemed to be served the hearing documents on April 18, 2010, the fifth day after they were mailed as per section 90(a) of the *Act*.

The Tenant appeared, was provided the opportunity to present his evidence orally, in writing, and in documentary form. No one attended on behalf of the Landlord despite being served notice of today's teleconference hearing in accordance with the *Act*.

Issues(s) to be Decided

Is the Tenant entitled to a Monetary Order pursuant to section 67 of the *Residential Tenancy Act*?

Background and Evidence

The verbal month to month tenancy agreement began on approximately March 1, 2007. Rent was payable on the first of each month in the amount of \$500.00 and the Tenant paid a security deposit of \$250.00 on approximately March 1, 2007.

The Tenant provided a copy of a hand written letter issued by the Landlord on January 26, 2010. He stated that he found this letter after it had been slid underneath his door on January 26, 2010. The letter indicated that the Landlord was ending the tenancy in one month so the Landlord's family could occupy the rental unit. The Tenant stated that he advised the Landlord that a two month notice was required to end his tenancy and that he received the 2 Month Notice to End Tenancy form on January 29, 2010, but that it was dated January 26, 2010.

The Tenant argued that the Landlord wanted him out of the rental unit by February 26, 2010 so he attempted to find a place as soon as possible. He informed the Landlord sometime near the end of February beginning of March 2010 that he had found a place and moved out by March 4, 2010. He sent the Landlord a letter on March 8, 2010, via regular mail, advising the Landlord of his forwarding address and telephone number and requested that his security deposit be returned.

The Tenant is seeking compensation equal to one month's rent for having to move for the Landlord's use of the rental unit and the return of his security deposit.

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

Section 49 of the Act provides that a landlord may end a tenancy for landlord's use of the property by issuing a two month written notice to end the tenancy effective on a date that must not be earlier than 2 months after the date the tenant receives the notice. In this case if the Tenant received the two month notice on January 29, 2010 therefore the tenancy would have ended on March 31, 2010.

Section 50 provides that if a landlord gives a tenant notice to end the tenancy under Section 49, the tenant may end the tenancy prior to the effective day by providing the Landlord notice. The tenant is required to pay the landlord a prorated amount of rent

due for the period the rental unit is occupied. In this case the Tenant would be required to pay the Landlord for rent from March 1 to March 4, 2010 at a daily rate of \$5.48 for total amount of \$21.92. Ending the tenancy under Section 50 does not affect the tenant's right to compensation under section 51 of the Act.

Section 51 of the Act provides 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 notice, compensation in the amount that is the equivalent to one month's rent payable under the tenancy agreement. The Tenant is therefore entitled to \$500.00 compensation for having to move as a result of the two month notice to end tenancy.

The evidence supports that the Tenant provided the Landlord with his forwarding address in writing on March 8, 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 23, 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 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 his claim for the return of double his security deposit plus interest.

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

Compensation for Notice to End Tenancy	\$500.00
Double Security Deposit (2 x \$250.00.)	500.00
Interest owed on Security Deposit from March 1, 2007 to August 18, 2010	6.93
LESS: Rent owed for March 1-4, 2010 (4 x \$5.48)	(21.92)
TOTAL OFF-SET AMOUNT DUE TO THE TENANT	\$985.01

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 **\$985.01**. 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: August 18, 2010.

Dispute Resolution Officer