



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes:

MNDC, MNSD

Introduction

This hearing was convened in response to the tenant's amended Application for Dispute Resolution, in which the tenant has made application for compensation for damage or loss under the Act, Regulation or Tenancy Agreement inclusive of an application of compensation for loss of tenant's right to quiet enjoyment, and for the return of the security deposit..

Both parties were present at the hearing. Evidence was reviewed and the parties were provided with the opportunity to provide documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed / sworn oral testimony, to ask each other questions and to make submissions during the hearing, as well as attempt to settle their dispute.

Issue(s) to be Decided

Is the tenant entitled to compensation for loss and loss of quiet enjoyment?
Is the tenant entitled to the return of their security deposit?

Background and Evidence

The tenant claims compensation for costs, and loss of quiet enjoyment. The claim includes the following:

Return of security deposit and interest	340.00
Reimbursement for painting	1000.00
Loss of quiet enjoyment @ 32.50/day	845.00
Loss of wages for June 1, 2010	200.00
Total	2385.00

The undisputed and relevant sworn testimony in this matter is as follows. The tenancy began July 15, 2008 on a month to month basis. The rental unit is a house. The tenancy ended June 15, 2010. Rent was initially payable at \$1280 per month, and then the parties agreed to a reduction to \$1100 per month in January 2009. At the outset of the tenancy the landlord collected a security deposit of \$640. The landlord and tenant did not perform a move in inspection and the requisite report. At the end of the tenancy the parties did an inspection, but the results were not recorded. The parties did not come to an agreement as to the administration of the security deposit. The tenant understood they would receive it in its entirety. The landlord then did another inspection on their own and determined to withhold all but \$300 – which was subsequently returned to the tenant. The tenant subsequently provided a written forwarding address to the landlord at the time they vacated on which the landlord acknowledges receiving and utilized to correspond with the tenant and mail out to them a partial return of the security deposit.

The contrasting sworn testimony in this matter is as follows. The tenant claims that he verbally contracted with the landlord that before he moved he would paint the inside of the rental unit, as he is a painter, and the landlord would pay him \$1000. The landlord adamantly disputed the tenant's testimony, stating there was no such agreement made and that after the tenants vacated; he had to repaint some of the purported work by the tenant. The tenant claims the amount of \$1000 they state the landlord promised. Both parties acknowledged there was no written agreement to this effect. The landlord stated that the tenant may have repainted so as to ensure a smooth move out inspection result.

The tenant claims that the landlord engaged in harassing behaviour toward them – primarily by way of showing up on the residential property unannounced and doing repairs or clean-up on the property without written notice to the tenant. The tenant claims that the landlord's conduct intruded on their privacy and sense of security – primarily on the part of the female tenant – whose husband was out of town. The tenant stated that this conduct was restricted to May 21, 2010 to the day they vacated almost three weeks later. The landlord testified that the tenant's claims are completely false and that animosity toward him began from the tenants on or near May 21, 2010 after a disagreement over the administration of the security deposit, the last month's rent and the tenant's pending departure from the rental unit. Police was called for assistance on one occasion. The parties were apprised of their obligations under the Residential Tenancy Act and the landlord tenant relationship then turned more formal between the parties. The female tenant claims that she grew sufficiently distressed over the insecurity in the relationship that she determined best to stay home from work on June 01, 2010, "to protect our property". The tenant claims loss of wages of \$200 for the

missed day of work – and provided a 'work attendance form' stating the tenant as 'sick'. The landlord disputes that the tenant had anything to be concerned about – that by June 01, the parties did not interact and spoke very little. The landlord testified that, "all attendances at the residential property were by verbal agreement with the tenant", who gave their consent and were expecting the landlord to be there, and that the tenant also assisted the landlord. The landlord testified that after May 21 he provided written notice on several occasions due to the change in the relationship. The tenant claims compensation for loss of quiet enjoyment in respect to the landlord's lack of written notice to enter the residential property, and for causing the tenant stress as a result. The landlord disputes the tenant's claim for monetary compensation.

Analysis

On preponderance of the evidence, and on the balance of probabilities; and, despite the vast contrast in testimony, I have reached a decision.

Such as in this matter, when making a claim for damages or loss under a tenancy agreement or the Act, the party making the claim or allegations has the burden of proving their claim. Proving a claim in damages or loss requires that it be established that the damage or loss occurred, that the damage or loss was a result of a breach of the tenancy agreement or Act, verification of the actual damage or loss claimed and proof that the applicant party took all reasonable measures to mitigate their loss.

The tenant has not provided supporting evidence to suggest that the aforementioned claim for painting in the amount of \$1000 is owed by the landlord. The onus is on the tenant to provide evidence that the landlord and the tenant contracted for the painting to be done and to be paid by the landlord. As a result, I must **dismiss** the tenant's claim for painting, without leave to reapply.

I find that the landlord's method of entering the residential property without written notice as prescribed by the Act sufficiently disturbed the tenant, despite any verbal consent they may have given. The parties completely disagree on the level of consent between the parties; however, the onus is on the applicant (the tenant) to prove that the landlord's conduct was unreasonably intrusive to warrant consideration as harassment or to justify a claim for loss of wages for taking a sick day off work. I find the tenant's evidence of a 'work attendance form' stating the tenant was 'sick' not sufficiently conclusive that it was the result of distress caused by the conduct of the landlord. I **dismiss** the tenant's claim for loss of wages, without leave to reapply.

On the balance of probabilities I find the landlord's conduct was not in compliance with the Act – given the lack of written notice to the tenants - and that this fact disturbed the tenant's quiet enjoyment. As a result, I award the tenant **\$250** for loss of quiet enjoyment.

Section 38 of the Residential Tenancy Act provides as follows:

Section 38(1)

38(1) Except as provided in subsection (3) or (4) (a), within 15 days after the later of

38(1)(a) the date the tenancy ends, and

38(1)(b) the date the landlord receives the tenant's forwarding address in writing,

the landlord must do one of the following:

38(1)(c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;

38(1)(d) file an application for dispute resolution to make a claim against the security deposit or pet damage deposit.

Further: 38(6) If a landlord does not comply with subsection (1), the landlord

38(6)(a) may not make a claim against the security deposit or any pet damage deposit, and

38(6)(b) **must pay the tenant double the amount of the security deposit**, pet damage deposit, or both, as applicable.

The Act requires that 15 days after the later of the end of tenancy and the tenant providing the landlord with a written forwarding address, the landlord must repay the security deposit or make an application for dispute resolution. If the landlord fails to do so, then the tenant is entitled to recovery of double the base amount of the security deposit.

I find that the tenancy ended on June 15, 2010, and that the tenant provided (their) forwarding address in writing on that date. I further find that the landlord has failed to repay all the security deposit or make an application for dispute resolution within 15 days of receiving the tenant's forwarding address in writing. I find that the landlord has

returned \$300 of the tenant's security deposit, dated June 29, 2010 and deemed received 5 days later.

I find that the tenant has established a claim for the outstanding security deposit of \$340 and accrued interest of \$4.46, and *double the amount* of the outstanding security deposit in the amount of \$340, for a total of **\$684.46**.

The tenant's total entitlement is for the sum of **\$934.46**.

Conclusion

I grant the tenant an Order under Section 67 of the Act for **\$934.46**.

If necessary, this Order may be filed in the Small Claims Court and enforced 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*.