

Decision

Dispute Codes:

MNDC, MNSD, FF

Introduction

This Dispute Resolution hearing was convened to deal with an Application by the tenant for a monetary order for money owed or compensation for damage or loss under the Act and an order for the return of double the security deposit retained by the landlord.

Despite being served by registered mail sent on June 16, 2010 the respondent did not appear.

Issue(s) to be Decided

The tenant was seeking to receive a monetary order for the return of the security deposit and compensation for costs stemming from wrongful eviction by the landlord.

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

- Whether the tenant is entitled to the return of the security deposit pursuant to section 38 of the Act. This determination depends upon the following:
 - Did the tenant pay a security deposit and pet damage deposit?
 - Did the tenant furnish a forwarding address in writing to the landlord?
 - Did the tenant provide written consent to the landlord permitting the landlord to retain the security deposit at the end of the tenancy?

- Was an order issued permitting the landlord to retain the deposit?
- Whether the tenant is entitled to monetary compensation under section 67 of the *Act* for damages or loss. This determination depends on the following:
 - Has the tenant submitted proof of damage or loss that was caused by the respondent through a violation of the *Act* by the respondent?

The burden of proof is on the applicant.

Background and Evidence

The tenant testified that the landlord verbally ended the tenancy effective May 31 and asked the tenants to move because the co-tenant had been arrested on the premises.

Submitted into evidence was a copy of a letter from the tenant confirming the tenant's position that the landlord had ordered the tenant to vacate on June 1, 2010, a copy of a fax from the landlord dated May 31, 2010 stating that the tenant could remain in the unit until June 30, 2010 but must pay rent for this period accompanied by an incomplete One-Month Notice to End tenancy for cause dated May 23, 2010 purporting to end the tenancy on May 23, 2010, a copy of the tenancy agreement and a copy of a letter from the tenant to the landlord objecting to the back-dated eviction notice that was issued after-the-fact.

The tenant testified that the landlord had not ended the tenancy in compliance with the *Act* and the tenant was forced to leave on short notice after being told by the landlord that everything had to be removed by the end of the month because another tenant was moving in. the tenant stated that she incurred costs of \$270.00 to rent a "U-Haul" and an additional cost of \$200.00 to pay for gas and help to pack up and drive her possessions to another location. The tenant was seeking reimbursement of \$470.00.

The tenant's witness gave testimony that verified the above expenditures and stated that the witness and others had arranged payment on a credit card as the tenant did not have her own account.

The tenant testified that when she vacated on June 1, 2010, the forwarding address was given to the landlord and the tenant subsequently received a partial refund along with a statement of damages from the landlord. According to the tenant, this occurred beyond the 15-day time limit. The tenant testified that she did not cash the cheque because she did not agree with the deductions from the \$450.00 security deposit.

Analysis

Claim for Damages and Loss

In regards to an Applicant's right to claim damages from the another party, 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.

It is important to note that in a claim for damage or loss under the Act, the party claiming the damage or loss bears the burden of proof 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 claimant, that being the tenant, to prove that the damage/loss stemmed directly from a violation of the agreement or a

contravention of the Act on the part of the landlord. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. Finally it must be proven that the claimant took reasonable steps to address the situation and to mitigate the damage or losses that were incurred.

Based on the evidence and testimony, I find that the tenant has established that the landlord wilfully contravened the Act by verbally insisting that the tenant move out of the unit on May 31, 2010 and I find that the subsequent issuance of a One-Month Notice purporting to end the tenancy at the end of June was deficient and of no force nor effect. I find that the tenant has met the burden of proof to support compensation under the Act for the costs of vacating in the amount of \$470.00.

Claim for Return of 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.

I find that the tenant's security deposit with interest was \$450.00 and the tenant is entitled to be paid double the security deposit totalling \$900.00 plus \$.57 interest for a total of \$900.57.

Conclusion

Based on the testimony and evidence presented during these proceedings, I find that the tenant is entitled to compensation of \$1,420.57 comprised of \$470.00 proven damages, \$900.57 refund of the security deposit and the \$50.00 cost of filing the application and I hereby issue a monetary order for \$1,420.57. This order must be served on the Respondent and may be filed in the Provincial Court (Small Claims) 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*.

Dated: October 2010.

Dispute Resolution Officer