Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing and Social Development

Decision

Dispute Codes:

MT, CNR, MNDC, MNSD

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant to cancel a purported Ten-Day Notice to End Tenancy for Unpaid Rent, a monetary order for money owed or compensation for damage or loss under the Act, cost of emergency repairs, return of the security deposit, a rent abatement for repairs, services or facilities agreed-upon and not provided and to be allowed more time to make an application to cancel a Notice to End Tenancy. The tenant's monetary claim related to occupancy of the unit under two tenancy agreements dealing with two different subsequent landlords, both of whom were named as respondents in this application.

Both the landlord and the tenant appeared and each gave testimony in turn.

Preliminary Matter: Respondents Named

The tenant's application for monetary compensation had named two individuals as respondent landlord, MS and JS. According to the tenant, she had originally rented the unit from MS, who turned out to be a renter himself with the owner, JS, as his landlord. MS had sub-rented the premises to the tenant without the owner's knowledge or permission. The tenant testified that at some point she became aware that MS had defaulted on his rental payments to the owner and his tenancy was going to be terminated. The owner's action against MS, would have also functioned to evict the tenant. The tenant testified that she then made a new tenancy agreement with the owner JS to rent the unit directly from the owner, who was in the process of terminating the previous tenancy agreement with MS.

I find that the matter of whether or not the owner had properly or completely ended his past tenancy relationship with MS is not material to any subsequent agreement or tenancy relationship he forged with the applicant tenant. Both participants confirmed that, as of July 2010, this tenant began paying the rent of $3,750.00 directly to JS, the landlord/owner.

However, the tenant's application was seeking monetary compensation for damages and loss from ***both*** of the former landlords. The tenant stated that she was claiming $18,800.00 in compensation from her original landlord, MS stemming from violations in her tenancy agreement with him and $4,763.00 compensation from the current owner/landlord, JS for damages and loss stemming from her subsequent tenancy agreement with him.

In section 1 of the Act, the definition of ***landlord*** includes the following:

(a) the owner of the rental unit, the owner's agent or another person who, on behalf of the landlord,

(i) permits occupation of the rental unit under a tenancy agreement, or

(ii) exercises powers and performs duties under this Act, the tenancy agreement or a service agreement;

(b) the heirs, assigns, personal representatives and successors in title to a person referred to in paragraph (a);

(c) a person, other than a tenant occupying the rental unit, who

(i) is entitled to possession of the rental unit, and

(ii) exercises any of the rights of a landlord under a tenancy agreement or this Act in relation to the rental unit;

(d) a former landlord, when the context requires this;

I find that the tenant had a tenancy agreement with MS that ended in July 2010, precisely when she entered into a new verbal tenancy agreement directly with the owner, JS. I find that MS was a former landlord by virtue of section 1(c) of the definition and JS was a landlord under section 1(a) of the definition.

I find that there were two separate tenancy agreements; one between the tenant and MS and a subsequent one between the tenant and JS for two sequential tenancies, each with its own particular terms. As such, I find that the tenant would be required to make a separate application for dispute resolution against each of the two different landlords pursuant to the terms of the applicable tenancy agreement and the Act.

Given the above, it was determined that this application before me would only proceed against the owner/landlord JS. It was determined that the portion of the application relating to claims against MS would be dismissed with leave to reapply and the tenant is at liberty to pursue the claims against her former landlord, MS through a new application

in future as she sees fit. Accordingly, the application for the purpose of the proceedings before me was amended to remove MS named as respondent and to only proceed with claims against JS.

Preliminary Matter: Request to Amend Application

The tenant requested to amend the application to include an additional claim for moving costs based on being wrongfully forced to vacate the unit by the landlord.

Rule 2.5 of the *Residential Tenancy Rules of Procedure* does permit amending an application but imposes the following criteria:

- The applicant may amend the application without consent if the dispute resolution proceeding has not yet commenced. If applications have not been served on any respondents, the applicant must submit an amended copy to the Residential Tenancy Branch and serve the amended application.
- If the application has been served, and all requirements can be met to serve each respondent with an amended copy at least seven (7) days before the dispute resolution proceeding, the applicant may be permitted to file a revised application with the Residential Tenancy Branch. A copy of the revised application must be served on each respondent at least five (5) days before the scheduled date for dispute resolution proceeding.
- The application will not be amended where it would result in prejudice to the other party. If the amendment is allowed, the arbitrator may adjourn the hearing to allow the respondent time to respond to the amended application.

I find that it would not be appropriate to grant this amendment. The issue of wrongful eviction had not been a part of the application and to introduce this for the purpose of the hearing, would unfairly prejudice the respondent. In any case, the tenancy had ended by mutual agreement and a signed copy of this document was in evidence.

Given the above, I am not able to hear, nor consider, a claim for moving costs by the tenant during these proceedings.

However, the tenant is at liberty to make a subsequent application seeking monetary compensation for damages and loss against the landlord, pursuant to section 67 of the Residential Tenancy Act.

Preliminary Matter: Security Deposit

The tenant had paid a security deposit of $1,875.00 to the owner/landlord and the tenant's application was claiming the return of the 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. However, the Act states that the landlord does have the right to retain a deposit if the tenant agrees in writing the landlord can keep it to satisfy a liability or obligation of the tenant.

Based on the testimony of both the landlord and the tenant, I find that the tenant gave the landlord written permission in an email communication to keep the deposit to pay for the final half of rent for September 2010. Therefore, this matter was found to be resolved and will not be part of these proceedings.

Issue(s) to be Decided

The remaining issue to be determined based on the testimony and the evidence is whether the tenant is entitled to monetary compensation for damages and loss under section 67 of the *Act.*

Background and Evidence

This tenancy began on July 16, 2010 and ended on September 30, 2010.

The tenant testified that costs were incurred for the painting and patching and this should be at the landlord's expense. The tenant testified that at the start of the tenancy, the landlord did not rent the home in a clean condition and it was left to the tenant to clean up the yard, garden, deck, windows, and interior of the house including garbage removal.

The tenant testified that during the tenancy she also assisted the landlord with other tasks such as assisting with the landlord's contractors and work crews as well as developers, preparing a proposal for developing the property and also assisting the landlord with the process of evicting the previous renter, who had been her landlord.

The tenant stated that she used up her own time and money in repairing the sink, taking care of the yard work and travelling to and from the landlord's business to deliver bank drafts and tenancy-related documents.

The tenant stated that she incurred expenses and losses including:

1	Cost of painter for painting & patching	500.00
2	Tenant's time and cost for assisting with painting and purchase of paint	396.00
3	Yard, garden, deck and windows clean-up	150.00
4	House clean-up inside and out	255.00
5	Garbage removal, truck rental, dumping fees and labour	164.00
6	Providing a chain-saw to landlord's work crew and purchase of gift for tool loan	55.00
7	Assisting owner with evicting former tenant	100.00
8	Tenant's time and cost to complete missed repair of sink	50.00
9	Fielding visits and inquiries from tradespersons and developers	50.00
10	Preparing 6-page development proposal as requested by landlord	150.00
11	Cost of bank drafts	24.00
12	Tenant's time and travel to deal with rent payment at $380.00 per hour	3,040.00
13	Garden and yard care between June 25 and September 30 2010 13.5 hours at $50.00/hr	675.00
TOTAL		4,763.00

The landlord denied that the painting and patching work described above was necessary and stated that the landlord never agreed to reimburse the tenant for

cleaning the unit. Moreover, according to the landlord, this work occurred under the tenant's previous tenancy involving the tenant's relationship with another landlord.

The landlord testified that the tenant had no authority or permission to liaise with his contractors nor others on behalf of the landlord and the development proposal was created on the tenant's own initiative. In regards to assisting with and serving the previous renter with eviction papers, the landlord stated that the tenant's help was not necessary. The landlord acknowledged the tenant's help with the sink repair and did not object to the $50.00 claimed. However, the landlord did not agree with the tenant's claim for the travel and time spent to pay her rent or meet with the landlord.

Analysis

In regards to an Applicant's right to claim damages from another party, Section 7 of the Act states that if a landlord or tenant does not comply with the Act, the regulations or the 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.

I find that in order to justify payment of damages under section 67, the Applicant would be required to prove that the other party did not comply with the Act and that this non-compliance resulted in costs or losses to the Applicant, pursuant to section 7.

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 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 respondent.

On the question of whether or not there was a violation of the Act by the landlord, I find that section 32 of the Act imposes a responsibility on the landlord to provide and maintain residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law, having regard to the age, character and location of the rental unit to make it suitable for occupation by a tenant.

Regardless of any contractual terms that may prevail, there is an expectation that at the start of the tenancy the rental unit is surrendered to the new tenant in a reasonably clean state. I find it evident that the landlord did not do a move-out condition inspection report with the previous renter to ensure that the unit was in rentable condition. I accept the tenant's testimony that she was required to do some clean-up when she began her tenancy with this landlord. Although the amount of time and costs were not verified, I grant the tenant $150.00 for cleaning and $100.00 for garbage removal.

I find that while there may have been expenditures for the cost of painting and patching, the tenant did not sufficiently prove that this was required under the Act or as a provision in the contract. Therefore this portion of the tenant's claim must be dismissed.

I find that the tenant's claims for reimbursement for purchasing a gift to the provider of a chain-saw for the landlord's work crew, for assisting owner with evicting the former renter, for fielding inquiries from tradespersons and developers and for preparing 6-page development proposal, were not related to any terms in the tenancy agreement between these parties. I find this is true whether or not these tasks were sanctioned or requested by the landlord. Accordingly, I find that the above claims must be dismissed. I do, however, grant the tenant's claim for compensation for her work in repairing the kitchen faucet in the amount of $50.00.

In regards to the tenant's cost for the bank drafts and the travel to and from the landlord's office, I find that these expenditures did not result from any violation of the Act or agreement by the landlord, and must be dismissed.

In regards to the care of the lawn and gardens, the tenant would be required to prove that the tenancy agreement included a term stating that the tenant would be reimbursed for such work. In cases where the rental unit has its own yard that is not shared and the tenancy agreement is silent on the issue of grounds-care, it is assumed that the tenant would be responsible for the most basic tasks such as watering and lawn cutting as part of the tenancy. In this instance I accept that the tenant did some work but I find no basis to order the landlord to provide compensation.

Based on the above, I find that the tenant is entitled to total monetary compensation of $325.00 comprised of $250.00 compensation for move-in cleaning, $50.00 for the sink repair and $25.00 for one half of the cost of filing the application.

Conclusion

I hereby grant the tenant an order under section 67 for $325.00. 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.

The remainder of the tenant's application is dismissed without leave to reapply.

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