

Decision

Dispute Codes:

MNSD , MNDC , FF

Introduction

This Dispute Resolution hearing was convened to deal with an application by the tenant for monetary compensation of \$1,300.00 for a refund of double the \$650.00 security deposit paid in January 2010. The tenant amended the application to add a \$262.50 monetary claim for the cost of carpet cleaning at the start of the tenancy for which the tenant was supposed to be reimbursed by the landlord.

The hearing was also to deal with a cross application by the landlord for \$1,300.00 claiming loss of rent for the month of August due to insufficient notice given by the tenant and to keep the \$650.00 security deposit.

Issues to be Decided

The tenant was seeking to receive a monetary order for the return of the security deposit retained by the landlord and monetary compensation for loss of value to the tenancy.

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 prove that a forwarding address was provided in writing to the landlord?
 - Did the tenant provide written consent at the end of the tenancy permitting the landlord to retain the security deposit or any portion thereof?
 - Was any order issued permitting the landlord to retain the deposit?

- Whether the claimants can prove that the claim for damages or loss is supported pursuant to *section 7* and *section 67* of the Act by establishing that the cost/losses were incurred due to the actions of the other party in violation of the Act or tenancy agreement.

The tenant has the burden of proof to establish that the deposit existed. The landlord has the burden of proof to show why the landlord had a legal right to retain the security deposit. In regards to the monetary claims for the carpet cleaning and the loss of rent, the burden of proof is on each claimant.

Background and Evidence

The tenant testified that the tenancy originally began in February 2010 with deposit of 650.00 and that the current rent had been \$1,300.00. The tenancy agreement was submitted into evidence. The tenant testified that at the beginning of the tenancy no move-in condition inspection report was completed and the rental unit was not in good condition or repair. The tenant testified that they were required to do painting, repairs and cleaning and were only reimbursed by the landlord for the paint and repairs. The tenant testified that they were never reimbursed for the carpet cleaning and are still owed 262.50. The tenant submitted copies of invoices for the paint and furnace services. The tenant testified that the ownership changed during the tenancy and in February 2010 they were advised not to submit any further bills to the original landlord.

In regards to the ending of the tenancy, the tenant stated that in July 2010 a decision was made to terminate the tenancy due to serious noise and disturbance issues which the landlord failed to rectify. The tenant stated that they were advised that the tenancy could be ended by mutual agreement and on August 3, 2010 both parties signed an agreement that the tenancy came to an end as of August 31, 2010. A copy of the agreement was in evidence. The tenant stated that the written forwarding address was provided but the landlord did not return the deposit within 15 days or since. The tenant is seeking a monetary order for double the deposit.

The landlord testified that although a mutual agreement to end tenancy was signed, this was agreed to based on the tenant's verbal consent that the landlord retain the \$650.00 deposit. The landlord stated that under the Act the tenant was required to provide one month notice and failed to do so. As a result the landlord lost \$1,300.00 rent for the month of August 2010 and is seeking compensation.

The landlord objected to the tenant's claim for reimbursement of the \$262.50 carpet cleaning that occurred at the start of the tenancy pointing out that the tenant had never brought up the alleged debt during the tenancy.

.Analysis

Security Deposit Claim by Tenant

Section 38 of the Act deals with the rights and obligations of landlords and tenants in regards to the return of security deposit and pet damage deposit.

Section 38(1) states that within 15 days of the end of the tenancy and receiving the tenant's forwarding address a landlord must either:

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

OR

- make an application for dispute resolution claiming against the security deposit or pet damage deposit.

The Act does give a landlord the right to keep a deposit if, at the end of the tenancy, if the tenant has provided written permission stating that the deposit can be retained by the landlord for a debt owed. However, even if I accept the landlord's testimony that the tenant gave verbal consent for the landlord to retain the deposit, this would not suffice to meet the requirements under the Act being that the consent must be in writing.

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.

I find that the landlord retained \$650.00 of the tenant's security deposit which was held in trust on behalf of the tenant and that the landlord did not make an application to retain the deposit within 15 days.

Based on the above, I find that the tenant is entitled to receive double the portion of the deposit wrongfully retained by the landlord, amounting to \$1,300.00.

Analysis: Damages and Compensation

The tenant's claim for damages of \$262.50 for the cost of cleaning the carpet and the landlord's claim for \$1,300.00 loss of rent are damages claims that fall under section 7 of the Act which 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.

Therefore 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

To support the claim for the carpet cleaning the tenant would need to prove the value 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. Once that has been established it must be proven that the claimant took reasonable measures to address the situation and to mitigate the damage or losses that were incurred

I find that the tenant has not furnished sufficient proof of the loss to satisfy element 3 of the test for damages and has also fallen short in meeting element 4 of the test. And therefore I find that the portion of the tenant's application for the \$262.50 cleaning costs must be dismissed.

In regards to the landlord's claim for loss of rent for the month of August 2010, I accept that there was a loss of \$1,300.00 incurred by the landlord and I also accept that the tenant gave short notice to end the tenancy under the Act. However, section 44(1)(c) of the Act allows parties to validly end a tenancy in compliance with the Act by entering into a mutual agreement to end tenancy and I find that such an agreement was signed on August 3, 2010. I find that the landlord has not succeeded in meeting element 2 of the test for damages. I find that the existence of the signed mutual agreement to end the tenancy dated August 3, 2010 effectively eliminated the tenant's initial violation of

section 45 of the Act, which only permits a tenant to terminate a month-to-month tenancy provided the tenant gives one month written notice to the landlord.

Therefore, I find that the landlord's application must be dismissed.

Conclusion

Based on the testimony and evidence presented during these proceedings, I find that the tenant is entitled to total monetary compensation of \$1,350.00, comprised of \$1,300.00 for double the portion of the security deposit wrongfully retained and the \$50.00 fee paid by the tenant to file this application. I hereby grant a monetary order in the amount of \$1,350.00 in favour of the tenant. This order must be served on the respondent and if unpaid may be enforced in Small Claims Court if necessary.

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

The landlord's application is dismissed in its entirety 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