



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes For the Tenant: MNSD, MNDC, FF
For the Landlord: MND MNDC, FF

Introduction

This hearing dealt with Cross Applications for Dispute Resolution.

The Tenant applied for a monetary order for money owed or compensation under the Act or tenancy agreement, to recover all or part of the security deposit and to recover the filing fee for the Application.

The Landlords applied for a monetary order for damage to the rental unit, for compensation under the Act and the tenancy agreement, and to recover the filing fee for the Application.

Service of the hearing documents was acknowledged by all parties and I find they were served in accordance with the Act.

The parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence **relevant** to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

Is the Tenant entitled to a Monetary Order under sections 38, 67, and 72 of the *Residential Tenancy Act*?

Are the Landlords entitled to a Monetary Order under sections 67 and 72 of the *Residential Tenancy Act*?

Background and Evidence

This tenancy ended on July 31, 2010 in accordance with the tenancy agreement. Rent was \$770.00 per month and a security deposit of \$385.00 was paid in September 2008.

The Tenant supplied evidence and gave affirmed testimony that the Landlords were provided the Tenant's forwarding address on August 6, 2010 by hand delivering a letter to Landlord EC. I note the letter signed by the Landlord contained the Tenant's forwarding address and was supplied into evidence.

Landlord EC, who signed the letter acknowledging the forwarding address, could not dispute the Tenant's testimony regarding the fact her security deposit had not been returned or that the Tenant had supplied her forwarding address.

The Landlord testified and submitted copies of photos and other evidence depicting alleged damage in the rental unit, allegedly caused by the Tenant and is seeking an order for monetary compensation. I note that it is not clear what the copies of the photos depict or when the photos were taken, as I further note the Landlords did not file an application for dispute resolution until October 14, 2010, 2 ½ months after the tenancy ended.

When questioned, Landlord EC admitted there was no move in or move out condition inspection performed with the Tenant at the start of the tenancy or at the end of the tenancy in conformance with the Act.

Analysis

Based on the testimony, evidence and a balance of probabilities, I find as follows:

In a claim for damage or loss under the Act or tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, based on a balance of probabilities.

To prove a loss and have one party pay for the loss requires the other party to prove four different elements:

First proof that the damage or loss exists, secondly, that the damage or loss occurred due to the actions or neglect of the Respondent in violation of the Act or agreement, thirdly, to establish the actual amount required to compensate for the claimed loss or to repair the damage, and lastly proof that the claimant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

I find that in order to justify payment of loss under section 67 of the Act, the Applicant Tenant would be required to prove that the other party did not comply with the Act and that this non-compliance resulted in 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; in this case both parties bear the burden of proof.

Tenant's Application:

In this case the evidence and testimony supports that the Tenant provided the Landlords with her forwarding address on August 6, 2010, personally.

The Landlords have admitted that they did not apply for dispute resolution to keep the security deposit, do not have an Order allowing them to keep the \$385.00, and they do not have the Tenant's written consent to retain the security deposit.

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 Landlords were required to return the Tenants' security deposit in full or file for dispute resolution no later than August 21, 2010.

Based on the above, I find that the Landlords have failed to comply with Section 23 (1) and 38(1) of the *Act* and that the Landlords are 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 and pet 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 her claim for the return of their security deposit plus interest.

I find that the Tenant has succeeded with her application therefore I award recovery of the \$50.00 filing fee.

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

Doubled Security Deposit owed 2 x \$385.00	\$770.00
Interest owed on the Security Deposit of \$385.00 from September 16, 200 to July 31, 2010	1.69
Filing Fee	<u>50.00</u>
TOTAL AMOUNT DUE TO THE TENANT	\$821.69

The Tenant is hereby granted a monetary **Order** in the amount of **\$821.69**. This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

Landlords' Application:

The obligation of the Landlords is to provide opportunities for a move in and move out condition inspection. With the contradicted documents in evidence and without the copies of photos or receipts proving damage caused by any party, I find the Landlords have not established the condition of the rental unit either before or after this tenancy

and therefore I find that the Landlords have **not** proven a monetary claim for the alleged damages to the rental unit.

I **dismiss** the Landlords' Application without leave to reapply.

I have included a guidebook to the Act for the Landlords to use as a reference.

Conclusion

The Tenant is granted a monetary Order in the amount of **\$821.69**.

The Landlords' Application is dismissed.

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 22, 2010.

Dispute Resolution Officer