Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

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

Introduction

This hearing dealt with Cross Applications for Dispute Resolution.

The Tenant applied for a monetary order to recover all or part of the security deposit and to recover the filing fee for the Application.

The Landlord 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, including the Tenant's Amended Application.

The Tenant and Agent for the Landlord 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, and 72 of the *Residential Tenancy Act*?

Is the Landlord 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, which was on a month to month basis at the end of the tenancy. Rent was $1,700.00 per month and a security deposit of $850.00 was paid in November 18, 2008. There was no dispute of the tenancy end date or that proper notice was supplied by the Tenant.

The Tenant supplied evidence and gave affirmed testimony that he dropped off the keys to the rental unit and moved out on July 29, 2010 and that the Landlord was provided the Tenant's forwarding address on that same day by email to the Agent for the Landlord. The Tenant sent an additional email on August 11, 2010, with a corrected unit number for his new address.

The Tenant testified that he, his father and the Agent for the Landlord had a meeting at the Tenant's new address on August 14, 2010, wherein there was a discussion about a carpet stain in the rental unit. The Tenant testified that, although the Landlord originally stated the carpet cleaning would be $100.00, he agreed the Landlord could keep $200.00 of the security deposit.

The Tenant testified and supplied evidence that he requested again on August 17, 2010 that the Landlord return his security deposit.

The Tenant testified he also paid $65.00 for fobs for the rental unit and that the Landlord sent him a cheque in that amount, as well as a cheque for $449.16, representing the balance of the security deposit less what the Landlord deemed carpet damage to be.

The Tenant testified that the cheques remain outstanding as he agreed to only pay $200.00 for carpet cleaning and should be refunded $650.00.

The Agent for the Landlord testified that the carpet was cleaned for $200.48, but that the damage was more extensive than originally anticipated, after the carpet cleaners said the stains would not come out. There was an additional charge for the clean, after which he deducted this amount and sent the balance of the security deposit to the Tenant. The Landlord submitted a copy of the receipt and estimate for cleaning.

The Agent for the Landlord testified that he did not know the Tenant's forwarding address until he received the notice of hearing on August 28, 2010. I note that the Landlord's Application was filed on October 15, 2010.

Upon query, the Agent for the Landlord admitted to the meeting with the Tenant and his father at the Tenant's new address on August 14, 2010, but did not notice the physical address.

When questioned, the Agent for the Landlord 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.

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.

Tenant's Application:

In this case the evidence and testimony supports that the Tenant provided the Landlord with his forwarding address on July 29, 2010 by email. Even though email is not a valid form of communication, I find that the parties had a history of this form of communication and that the Agent for the Landlord did in fact receive notice. I further find there was in fact email communication from the Agent for the Landlord on August 17, 2010, requesting more time to address the matter of the security deposit.

The Landlord did not apply for dispute resolution to keep the security deposit until October 15, 2010, does not have an Order allowing him to keep the $850.00, and does 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 Landlord was required to return the Tenant's security deposit in full or file for dispute resolution no later than September 13, 2010.

Based on the above, I find that the Landlord has failed to comply with Section 23 (1) and 38(1) of the *Act* and that the Landlord is 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 his claim for the return of his security deposit plus interest. I do find that the Landlord is entitled to retain $200.00 as per the Tenant's testimony agreeing to this amount and should also remit funds again for the door fobs.

I find that the Tenant has succeeded with his 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 $850.00	$1,700.00
Interest owed on the Security Deposit of $850.00 from November 18, 2008 to July 31, 2010	1.53
Door Fobs	65.00
Filing Fee	50.00
Sub-Total owed the Tenant	1,816.53
(Less set off agreed to by Tenant for carpet cleaning)	($200.00)
TOTAL AMOUNT DUE TO THE TENANT	**$1616.53**

The Tenant is hereby granted a monetary **Order** in the amount of **$1,616.53**. This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

Landlord's Application:

The obligation of the Landlord is to provide opportunities for a move in and move out condition inspection. With the contradicted documents and statements in evidence, I find the Landlord has not established the condition of the rental unit either before or after this tenancy and therefore I find that the Landlord has **not** proven a monetary claim for the alleged damages to the rental unit. I only allow the Landlord retain $200.00 with the consent of the Tenant.

I do not accept the testimony of the Agent for the Landlord and I find the Landlord knew the Tenant's forwarding address no later than August 14, 2010, when a meeting took place of the Tenant's new address. Further, the Agent for the Landlord admitted learning of the forwarding address when he received the notice of hearing on August 28, 2010.

The Landlord may retain $200.00 from the total amount due of $1,816.53, and must return the balance of **$1,616.53** to the Tenant.

I **dismiss** the Landlord's Application without leave to reapply.

Conclusion

The Tenant is granted a monetary Order in the amount of **$1,616.53.**

The Landlord's 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 27, 2010.

Dispute Resolution Officer