



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

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 the security deposit retained by the landlord.

Despite being served by registered mail sent on September 21, 2010, the respondent landlord did not appear.

Issue(s) to be Decided

The tenant was seeking to receive a monetary order for the return of the portion of the security deposit not yet refunded by the landlord and compensation for five days rent during the month of August 2010.

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.
- Whether the tenant is entitled to monetary compensation under section 67 of the *Act* for damages or loss.

Background and Evidence

Submitted into evidence was a copy of the tenancy agreement, a copy of the move-in inspection report dated August 1, 2008 signed by both parties, a copy of a document issued by the landlord showing charges for alleged damages, a copy of a refund cheque for \$390.00 from the landlord dated September 17, 2010 and photos of the unit.

The tenant testified that the tenancy began on August 1, 2008 with rent of \$950.00 with a security deposit of \$475.00. The tenant testified that the tenant gave ample notice to vacate effective August 31, 2010 and paid rent to the end of August. The tenant testified that they started to vacate in mid August and the unit was reasonably clean, but

they intended to do the final clean-up just prior to the expiry of the tenancy. However, according to the tenant, on August 27, 2010 when they tried to enter the unit they discovered that the landlord had changed the locks. The tenant pointed out that this was done at least five days prior to the end of August while the tenant still retained possession. The tenant is seeking compensation for five days of rent paid in the amount of \$156.16.

In regard to the return of the security deposit, the tenant testified that a written forwarding address was never provided to the landlord, however, the parties were in contact and they met to receive a cheque from the landlord for a partial refund of their security deposit in the amount of \$390.00. The tenant testified that the tenant had never given the landlord written permission to retain any portion of the security deposit and expected a full refund. The tenant is seeking the return of double the security deposit under the Act.

Analysis

Claim for Damages and Loss

In regard 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 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 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 landlord. Based on the evidence and testimony, I find that the landlord wilfully contravened the Act by changing the locks of the unit at least five days prior to the end of the tenancy, thereby depriving the tenant access during a period of time while the tenant still had a right to legal possession. I find that the tenant has therefore met the burden of proof to support compensation under the Act for five days and that the pro-rated amount based on a rental rate of \$950.00 per month would be \$156.16.

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 an application for an order to keep the deposit.

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 after receipt of the tenant's written forwarding address, the landlord may not make a claim against the security deposit and must pay the tenant double the amount of the security deposit. The tenant was claiming compensation equal to double the deposit. However, in this instance I find that the tenant did not provide a written forwarding address prior to making the application for dispute resolution and therefore the fifteen days had not yet expired as of the date of the application.



Dispute Resolution Services

Page: 4

Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

Although the tenant is not entitled to the return of double the security deposit, I find that the tenant is still entitled to the remainder of the original security deposit that was wrongfully withheld by the landlord for an additional refund of \$85.00 plus \$0.60 interest.

Based on the evidence I find that the tenant is entitled to a total monetary order of \$291.76 comprised of \$156.16 damages, \$85.60 remaining security deposit and the \$50.00 paid for this application.

Conclusion

Based on the testimony and evidence presented during these proceedings, I find that the tenant is entitled to compensation of \$291.76. 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: January 2011.

Residential Tenancy Branch