



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

Decision

Dispute Codes:

MNDC MNSD FF

Introduction

This Dispute Resolution hearing to deal with an Application by the landlord for a monetary order against the tenant for money owed or compensation for damage or loss under the Act and to retain the security deposit as partial satisfaction for the amount claimed. The hearing was also convened to deal with a cross Application by the tenant for a monetary order for the return of the security deposit and compensation for damage or loss under the Act.

Both the landlord and the tenants were present and gave testimony.

Issue(s) to be Decided

The landlord was seeking to receive an order to keep the tenant's security deposit and a monetary order for two months loss of rent and the issue to be determined based on the testimony and the evidence is whether the landlord is entitled to monetary compensation under section 67 of the *Act* for damages or loss and to retain the security deposit and be granted a monetary order for the remainder.

The tenant was seeking to receive a monetary order for the return of the tenant's security deposit and compensation for losses for moving costs. The issues to be determined based on the testimony and the evidence are:

- Whether the tenant is entitled to monetary compensation under section 67 of the *Act* for damages or loss.
- Whether the tenant is entitled to the return of the security deposit pursuant to section 38 of the *Act*

The burden of proof is on each applicant in respect to their reciprocal claims.

Background and Evidence

The parties submitted into evidence, a copy of the tenancy agreement, written testimony, financial data, copies of communications and proof of service.

The following facts are not under dispute:

- The parties signed a tenancy agreement for a tenancy that was to begin on August 1, 2010.
- The tenant paid a security deposit of \$487.50.
- The tenants were permitted to move in part of their furniture before the start date.
- The tenant told the landlord that \$700.00 would be paid to the landlord on the move in date which was August 1, 2010.
- The landlord told the tenant that the tenancy was not going to proceed and refused to permit the tenant to move in.
- The landlord did not refund the tenant's security deposit and made application within 15 days to retain the deposit.

The landlord testified that he believed that, because the tenant had not moved in yet, no tenancy was established. The landlord testified that the tenant's failure to honour the commitments made resulted in his decision not to rent the unit to this tenant. The landlord's monetary claim was based on loss of two month's rent totaling \$1,950.00 plus retention of the \$487.50 security deposit for a monetary claim of \$2,437.50.

The tenant stated that they were entitled to the return of the security deposit by law and the landlord has no valid reason to retain it. In regard to the tenant's monetary claim for damages, the tenant testified that this was the equivalent of one-month rent in the amount of \$975.00, given that, due to the landlord's violation of the Act, they were suddenly rendered homeless and were forced to impose on friends for storage of their possessions while they set up a temporary home in a leaky camper. The tenant testified that, due to the unhealthy conditions during the month they stayed in the camper, both of the tenants became ill. One of the tenants apparently contracted pneumonia and the other evidently suffered a loss of two-weeks pay from employment as a result.

Analysis

Section 16 of the Act provides that the rights and obligations of a landlord and tenant under a tenancy agreement take effect from the date the tenancy agreement is entered into, whether or not the tenant ever occupies the rental unit. (my emphasis). Section 6

of the Act provides that the rights, obligations and prohibitions established under the Act are enforceable between a landlord and tenant under a tenancy agreement and that either may make an application for dispute resolution if they cannot resolve a dispute.

In this instance I find the parties entered into a written agreement that stated the tenant would take possession on August 1, 2010 and I find that the landlord ended this tenancy on August 1, 2010 in a manner not permitted under the Act. Given the above, regardless of the tenant's shortfall in payment of the rent, I find that the landlord is not entitled to be compensated for any loss or damage stemming from the failure of this tenancy relationship, being that the landlord was responsible for ending the contract and did so in violation of the Act.

With respect to the refund of the security deposit, I find that these funds are always held in trust for the tenant unless an order is issued or written permission is given by the tenant for the landlord to keep it. Pursuant to section 38 of the Act, I find that the \$487.50 security deposit must be returned to the tenant forthwith.

With respect to the tenant's monetary claim for damages in the amount of \$950.00, 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 tenant.

I find there is no doubt that the landlord breached the Act and the tenant suffered a loss as a result. However, there was some difficulty establishing the appropriate amount of compensation. I find that the tenant had mitigated the damage by enduring some

hardship and imposing on friends, while at the same time searching for alternate accommodation. During the testimony on this issue a mediated discussion ensued resulting in a mutual agreement between the parties regarding the amount of compensation. It was agreed that the landlord would repay the \$487.50 deposit as required by the Act plus one half a month rent of \$487.50 as monetary compensation to the tenant for a total of \$950.00.

Accordingly a monetary order of \$950.00 will be issued to the tenant to be served on the landlord. However, because the landlord is out of the country, he agreed to forward a cheque for the funds forthwith and once received, the tenant will discard the monetary order as satisfied in full.

Conclusion

I hereby grant a monetary order in favour of the tenant for \$950.00. 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.

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