

Decision

Dispute Codes:

MND, MNDC, MNSD, FF

Introduction

This Dispute Resolution hearing was to deal with an application by the tenant for the return of double the security deposit. The hearing was also to deal with a cross application by the landlord for a monetary order for money owed or compensation for damage or loss under the Residential Tenancy Act, (the Act), and an order to retain the security deposit in partial satisfaction of the claim.

Only the landlord attended. As the tenant did not attend to present his evidence for the return of the security deposit, the tenant's application was dismissed and only the hearing for the landlord's claim proceeded.

Preliminary Matter

Recording

At the outset of the hearing, the landlord advised that the hearing was being recorded. I advised the landlord that, under Rule 9.1, the Residential Tenancy Rules of Procedure prohibit recording of the hearing and specifically stating that:

"Private audio, photographic, video or digital recording of the dispute resolution proceeding is not permitted."

Rule 9.2 contains provisions for arranging official recording as excerpted below:

"a party requesting an official recording by a court reporter must provide written notice stating the reasons for the request, to the other party and to the Residential Tenancy Branch at least two (2) business days in advance of the dispute resolution proceeding. A Dispute Resolution Officer will determine whether to grant the request and will provide written reasons, if requested. If permission is granted for an official recording of the dispute resolution proceeding by a court reporter, the party making the request must:

- (a) make all necessary arrangements for attendance by a court reporter and court reporter's necessary equipment;*
- (b) pay the cost of the court reporter's attendance at the dispute resolution proceeding, and the recording; and*
- (c) must provide all parties with copies of the recording, transcript, or both, as ordered by the Dispute Resolution Officer. "*

The landlord did not agree to cease recording the proceedings and insisted that it was within his legal right to do so. The landlord was asked again to turn off the recording device. Notwithstanding the participant's violation of the Rules of Procedure, the hearing then proceeded.

Issue(s) to be Decided

The issue to be determined based on the testimony and the evidence were:

- Whether the landlord was entitled to monetary compensation under section 67 of the *Act* for damages or loss and to retain the security deposit. This determination was dependant upon answers to the following questions:
 - Has the landlord submitted proof that the claim for damages or loss is supported pursuant to *section 7* and *section 67* of the *Act* by establishing on a balance of probabilities:
 - a) that the damage or loss was caused by the actions of the tenant and in violation of the *Act*
 - b) a verification of the actual costs to repair the damage
 - c) that the landlord fulfilled the obligation to do whatever is reasonable to mitigate the costs

The burden of proof regarding the above is on the landlord/claimant.

Background and Evidence

The landlord was seeking total damages of \$800.00 and to retain the security deposit in partial satisfaction of the claim with a monetary order for the rest.

According to the landlord, the tenancy began on July 16, 2008 and ended in June 2009. The rent was \$850.00 and, according to the landlord, the tenant was credited with \$400.00 per month for chores. The security deposit was \$425.00 and was not returned to the tenant. The landlord testified that the tenant had never given a forwarding

address until the landlord received notification of the tenant's application and claim for the security deposit, which was filed in October 2010. No tenancy agreement was in evidence. In fact, no evidence of any kind was submitted by the landlord in support of the claim.

The landlord gave a verbal statement about the circumstances in relation the events prompting the termination of the tenancy. The landlord was informed that this evidence was not relevant to the landlord's monetary claim.

Analysis

In regards 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 order payment in such circumstances.

I find that 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

In this instance, the burden of proof is on the claimant, that being the landlord, to prove the claim.

Although the landlord stated that he could obtain copies of the relevant receipts, this evidence was not before me and under the Act. I note that the Landlord and Tenant Fact Sheet contained in the hearing package makes it clear that "*copies of all evidence from both the applicant and the respondent and/or written notice of evidence must be*

served on each other and received by RTB as soon as possible", and the Residential Tenancy Rules of Procedure, Rule 3, requires that the applicant must submit evidence to the Residential Tenancy Office and serve all evidence being relied upon to the respondent at the same time as the application is filed if possible or at least (5) days before the dispute resolution proceeding.

Given the above, the landlord was advised that it was not possible for a dispute resolution officer to accept any evidence after-the-fact.

In the absence of evidence, I find that the landlord has not sufficiently proven the landlord's claim for monetary compensation and right to retain the deposit. I find that the landlord's application must be dismissed.

Despite finding that the landlord's claim has no merit, I decline to order the landlord to return the tenant's security deposit to the tenant. I accept the landlord's testimony that the tenancy ended in June 2009 and that the tenant had not provided the forwarding address until the tenant filed his application in October 2010. I find that the tenant had failed to provide the landlord with a forwarding address within one year of the date the tenancy ended.

Section 39 of the Act states that, despite any other provision of the Act, if a tenant does not give a landlord a forwarding address in writing within one year after the end of the tenancy: (a) the landlord may keep the security deposit or the pet damage deposit, or both, and; (b) the right of the tenant to the return of the security deposit or pet damage deposit is extinguished.

Based on the testimony and evidence presented during these proceedings I find that the both the landlord's application and the tenant's application must be dismissed.

Conclusion

I hereby order that the tenant's application is dismissed in its entirety without leave to reapply. I further order that 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: February 2011.

Residential Tenancy Branch