



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes:

MNSD, MNDC, MNR, MNDFE

Introduction

The hearing was convened to deal with an application by the tenant for the return of double the security deposit and pet damage deposit under the Act. The tenant was also seeking reimbursement for the \$50.00 fee paid for this application.

This Dispute Resolution hearing was also convened to deal with a cross application by the landlord for a monetary claim of \$6,793.35 for loss of rent and damages and reimbursement for the \$50.00 fee paid for this application.

Both the landlord and tenant were present and each gave testimony in turn.

Issues to be Decided for the Tenant's Application

The issue to be determined based on the testimony and the evidence is whether or not the tenant is entitled to return of double the security deposit and pet damage deposit under section 38 of the Act.

Issues to be Decided for the Landlord's Application

The landlord was seeking a monetary order for repairs, cleaning, loss of rent, and other damages and the issue to be determined, based on the testimony and the evidence, is whether the landlord is entitled to compensation under section 67 of the *Act* for loss of rent and other damages.

Burden of Proof: The burden of proof was on the tenant to establish that the deposit was paid and that 15 days had expired from the time that the forwarding address was given, without the landlord either refunding the deposit or making an application to keep it. The landlord had the burden of proof to show that compensation for damages and loss was warranted and supported by the evidence submitted.

Only the evidence and testimony relevant and material to the issues under dispute and the findings in this matter are described in this decision.

Background and Evidence

The tenancy began in March 2010 with rent of \$1,200.00. A security deposit of \$600.00 and a pet damage deposit of \$400.00 had been paid. A previous hearing held on October 18, 2010 dealt with a damage claim by the tenant and an application to end the tenancy by the landlord. Neither of these issues are part of the current applications and claims before me. However, the previous decision found that the landlord had received the tenant's written forwarding address by October 15, 2010.

The tenant testified that the landlord had not returned the tenant's security and pet damage deposits within fifteen days after being given the tenant's written forwarding address and, in fact, the landlord has not returned either of the deposits to date. The tenant is therefore seeking a refund of double each deposit, pursuant to the provisions in section 38 of the Act.

A substantial amount of evidence was submitted by the landlord, including written testimony, email communications, statements, a copy of the tenancy agreement, estimates, invoices and receipts. No copies of a Move-In or a Move-Out Condition Inspection Report was in evidence. The tenant submitted written testimony disputing the landlord's claims and photographs of the rental unit taken at the end of the tenancy.

The landlord testified that the tenant abandoned the unit on October 2, 2010 without giving proper written notice and without paying any rent for the month of October and there was a loss of rent in the amount of \$1,200.00 which is being sought as damages. The landlord was also claiming a loss of rent for November 2010 based on the tenant's failure to give notice and the fact that the unit was still not in a rentable condition. According to the landlord, the cleaning and repairs took up the entire month of October as well as November 2011. The landlord testified that the unit has not yet been re-rented to date.

The landlord also testified that when the tenant vacated, the unit was left in a very dirty condition and significantly damaged, particularly the flooring.

The landlord testified that the carpets required intensive cleaning and produced a copy of an estimate for \$526.40 from a professional carpet cleaner. The landlord testified that the carpets were approximately 10 years old but were in good condition when the tenant first took occupancy. According to the landlord, due to an alleged flea infestation and damage from the tenant's unauthorized cat, the carpet required total replacement and the landlord had flooring installed at a cost of \$953.21. The landlord submitted two invoices for the purchase of the flooring into evidence.

The landlord had provided verification of other expenditures relating to the cost of the replacement flooring, such as baseboards, bleach, nails and disposal costs for the old carpeting.

The landlord submitted numerous invoices and receipts for alleged repairs to the unit including wall repairs, replacement of locks and keys, a kitchen sink, (faucet), and other supplies totaling \$337.56. The landlord is seeking compensation for these costs.

In addition to the above, the landlord requested an order to keep the \$600.00 security deposit and \$400.00 pet damage deposit.

The landlord testified that she is also seeking reimbursement for the costs of her mother's trip from another province that was apparently made to assist the landlord with preparing the suite. The claim included flight taxes, airport shuttle and bus transit costs. Also being claimed was compensation for 24 hours of lost wages from her employment and charges for the 30 hours of labour spent in cleaning, for total compensation of \$1,383.70.

The landlord stated that she had also personally spent 16 hours cleaning the rental unit as a cost of \$192.00 and is claiming compensation for this as well.

The tenant disputed all of the landlord's claims. The tenant testified that the tenant ended the tenancy at the landlord's request and pointed out that by the end of September the landlord had already locked up the mailbox, storage shed and laundry facilities preventing the tenant's use. The tenant stated that because of the landlord's conduct, they felt that they had to vacate as quickly as possible and were gone by October 2, 2010. The tenant testified that the landlord was verbally advised in mid-September that the tenant would be vacating the unit. The tenant's position is that the landlord's claim for loss of rent for the month of October has no merit.

With regard to the landlord's claim that the suite was left in an un-rentable state requiring extensive repairs, the tenant argued that there was absolutely no damage that did not pre-exist the tenancy. The tenant stated that no move-in condition inspection report was done at the start of the tenancy and no move-out condition inspection was done at the end of the tenancy. According to the tenant, the unit was left in better condition than when they first took possession.

The tenant denied that a serious flea infestation was caused by the tenant and stated that their dog was on a special anti-flea medication program through their veterinarian that would prevent the proliferation of fleas. The tenant's position was that the landlord's choice to replace the carpeting was not genuinely based on any damage done by the

tenant. In support of the testimony, the tenant referred to numerous photographs of the unit taken by the tenant after their furniture and belongings were removed.

With respect to the purchase of supplies claimed by the landlord, the tenant pointed out that some of the invoices and receipts were not accurate, others contained personal items, predated the tenancy, or were for items purchased prior to the date the tenants moved out.

In regard to the claims for the transportation and labour costs incurred by the landlord and her mother, the tenant disputed this portion of the claim. The tenant's position was that, the fact that the landlord's mother had to travel did not relate to the tenant nor the tenancy. The tenant also argued that there was no proof of the wage losses and pointed out that the tenant's photographic evidence contradicted the landlord's claim that cleaning was even necessary.

Analysis: Tenant's Application

The tenant made application for the return of the security deposit and section 38 of the Act deals with this issue. Section 38(1) states that within 15 days of the end of the tenancy and receiving the tenant's forwarding address a landlord must either:

- repay any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations OR
- make an application for dispute resolution claiming against the security deposit or pet damage deposit.

The landlord was in possession of the tenant's security deposit held in trust on behalf of the tenant at the time that the tenancy ended. I find that because the tenancy was ended and the forwarding address was deemed to have been provided as of October 15, 2010, the landlord was required to either return the deposit or made an application for dispute resolution within the following 15 days. However, the landlord's application for dispute resolution was not processed until March 7, 2011, well beyond the fifteen-day deadline.

Section 38(6) provides that, if a landlord does not act within the above deadline, the landlord; (a) may not make a claim against the security deposit or any pet damage deposit, and; (b) must pay the tenant double the amount of the security deposit.

Based on the above, I find that the tenant is entitled to receive double the \$600.00 security deposit and double the \$400.00 pet damage deposit paid, for entitlement to a total refund of \$2,000.00.

Analysis: Landlord's Application

In regard to the landlord's claim for monetary damages, an applicant's right to claim damages from the other party is covered under, Section 7 of the Act which 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 of , and order a party to pay, compensation to the other party.. 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 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 respondent.

I find that the evidence and testimony of both parties clearly establishes that the tenant did violate the tenancy agreement and the Act by moving out without giving proper written notice under the Act. However, I accept the tenant's testimony that the landlord had restricted certain services, facilities and common areas by denying the tenant access, padlocking the mailbox and changing locks on some doors prior to the end of September 2010. I find that these actions appear to support the tenant's allegation that the landlord was likely aware that the end of this tenancy was imminent and was eager to terminate the relationship with the tenant.. Given the above, I find that the landlord is entitled to be reimbursed for a portion of the rent loss for October in the amount of \$600.00

With respect to the claims for cleaning and repairs, I find that section 37(2) of the Act states that, when a tenant vacates a rental unit, the tenant must leave the rental unit

reasonably clean, and undamaged except for reasonable wear and tear. In establishing whether or not the tenant had complied with this requirement, I find that this can best be established with a comparison of the unit's condition when the tenancy began with the final condition of the unit after the tenancy ended. In other words, through the submission of move-in and move-out condition inspection reports containing both party's signatures. Section 23(3) of the Act covering move-in inspections and section 35 of the Act for the move-out inspections places the obligation on the landlord to complete the condition inspection report in accordance with the regulations and both the landlord and tenant must sign the condition inspection report after which the landlord must give the tenant a copy of that report in accordance with the regulations.

In this instance, the landlord admitted that neither a move-in condition inspection report nor move-out condition inspection report was completed. I find the failure to comply with sections 23 and 35 of the Act function to hinder the landlord's ability to establish the tenant's liability for the end-of-tenancy condition. Moreover, I find that the landlord has not sufficiently proven that the unit was left damaged and not reasonably clean, particularly in the face of photographic evidence submitted by the tenant showing clean appliances, fixtures and floors, intact shelving, undamaged closet rods, clear walls and no indication of garbage left, as was alleged by the landlord.

With respect to the claimed loss of rent for the month of November 2010, I do not accept that the unit was rendered un-rentable for this duration solely because of the condition left by the tenant November, presuming that the landlord attended to the work without undue delay.

While I accept that the landlord certainly did incur costs to replace the flooring and did purchase materials and supplies, I find that these claims failed to satisfy elements 1 and 2 of the test for damages. Accordingly I find that the landlord's claim for the cost of repairs to the unit and replacement of the flooring must therefore be dismissed.

I find that the Landlord's claim for reimbursement for the transportation, wage loss and labour costs do not satisfy the test for damages and must also be dismissed.

Conclusion

Based on the testimony and evidence presented during these proceedings, I find that the tenant is entitled to compensation of \$2,050.00 including \$2,000.00 for double the security and pet damage deposits and the \$50.00 cost of filing the application.

Based on the testimony and evidence presented during these proceedings I find that the landlord is entitled to total monetary compensation of \$600.00 comprised of partial loss of rent for the month of October 2010. The remainder of the landlord's application is dismissed without leave.

Pursuant to my authority under section 72 of the Act, I order that the monetary award of \$2,050.00 to which the tenant is entitled, be reduced by the \$600.00 compensation for owed to the landlord. Accordingly I hereby issue a monetary order in favour of the tenant for the remainder of \$1,450.00. This order must be served on the landlord by registered mail or in person 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: March 2011.

Residential Tenancy Branch