



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MNSD, LRE, LAT, FF, SS

Introduction

This conference call hearing was convened in response to the tenant's application for an Order permitting him to change the locks in the rental unit; to suspend or set conditions on the landlord's right to enter the rental unit; a monetary order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement; to serve documents or evidence in a different way than required under the Act; for the return of the security deposit; and to recover the filing fee for this application.

Both parties attended the hearing and provided affirmed testimony. They were given a full opportunity to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Is the tenant entitled to change the locks in the rental unit?

Is the tenant entitled to an Order to suspend or set conditions on the landlord's access to the unit?

Is the tenant entitled to a monetary order?

Is the tenant entitled to the return of the security deposit?

Is the tenant entitled to recover the filing fee?

Background and Evidence

Pursuant to a written agreement, the fixed term tenancy started August 10th, 2010 and is to end August 1st, 2012. Rent is \$700.00 payable on the first of each month and the tenant paid a security deposit of \$350.00.

The tenant testified that he left for the United States in April 2011, and that the landlord conducted an inspection on April 20th, 2011 with a third party. The tenant stated that the landlord conducted another inspection in May 2011 which resulted in food spoilage in the freezer. The tenant said he was concerned with the landlord's access to the unit in his absence. The tenant referred to a copy of an email from the landlord dated May 24th, 2011 in which the landlord informed the tenant that he was conducting an appraisal. The tenant said that he was concerned with the landlord's access to the unit in his absence, that he wanted \$100.00 in compensation for his food, and the return of his \$350.00 security deposit.

The landlord did not dispute his attendance at the rental unit. He clarified that the May 24th inspection was necessary as the bank requested the appraisal. He stated that he could not find where the tenant said he left the keys and that he had to remove the lock to gain access. He said that he discovered that the tenant had installed interior deadbolts, and that the freezer door was open. He said that he closed it and after the appraisal, he secured the unit as he found it. He said that he still does not have the keys to access the tenant's unit during his absence, and that he has not been inside the unit since.

Analysis

The parties were provided an opportunity to discuss their views, however this was not productive as the dispute is ongoing and very contentious.

Before a Dispute Resolution Officer can make an order under section 67 of the *Residential Tenancy Act*, the applicant must first prove the existence of damage or loss; that it stemmed from the other party's violation of the Act, regulation, or tenancy

agreement; that the monetary amount of the claim was verified; and that the applicant took steps to mitigate or minimize the loss or damage. When these requirements are not satisfied, and particularly when the parties' testimonies are at odds, in the absence of other substantive independent evidence the burden of proof is not met. In this matter that burden was on the tenant to prove his claim against the landlord.

The landlord has a duty of care and a right to enforce a tenancy pursuant to the Act. The tenant has applied for an Order and restrictions in anticipation of the landlord not complying with the Act. I find no legal basis on which to impose orders upon the landlord for breaches that have not yet occurred, and I find the tenant's claim premature. The landlord has a right to inspect the rental unit every month pursuant to the Act. If the tenant is not available for these inspections, it is up to the tenant to make alternate arrangements and allow the landlord to exercise this right. Therefore the tenant's application to change locks to the unit, and to suspend or set conditions on the landlord's right to access the rental unit is dismissed.

Concerning the claim for damages, the tenant provided no material evidence to support his allegation that the landlord is responsible for the loss of food in the freezer and I dismiss this portion of the claim. The tenancy is ongoing and still in effect, therefore the claim for the return of the security deposit is also premature and hereby dismissed.

Turning to the landlord's claim for damages within this application; Section 60(1) of the Act provides in part for the landlord to make a separate application for dispute resolution over matters related to the tenancy within two years. The landlord is entitled to claim monetary compensation against the tenant for damages and to submit evidence at that time.

Conclusion

The tenant'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: July 15, 2011.

Residential Tenancy Branch