Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes Landlord: MND, MNDC, FF
Tenant: MNR, MNDC, FF, SS, O

Introduction

This hearing dealt with cross Applications for Dispute Resolution. Both parties sought monetary orders and the tenant also sought an order to allow for substituted service.

The hearing was conducted via teleconference and was attended by the landlord's agent and the tenant.

This dispute results from a tenancy that ended on September 30, 2010. After the tenancy ended the tenant applied for compensation and a hearing was conducted on October 15, 2010 (File #XXXXXX). In her decision dated October 27, 2010, the Dispute Resolution Officer disallowed the tenant to amend that application at the hearing to include moving costs and noted the tenant was at liberty to submit a separate application.

The landlord filed his Application for Dispute Resolution (File #XXXXXX) on April 6, 2011 and provided documentary evidence confirming the Notice of Hearing and Application were delivered to the tenant by registered mail on April 18, 2011. The tenant testified that she did not receive the landlord's Application until July 15, 2011, as she was out of the country from May 2011 until July 2011 and she was unable to get through the mail until July 15, 2011.

The tenant testified this is why she did not file her Application for Dispute Resolution (File #XXXXXX) until July 21, 2011. The tenant provided confirmation she served the landlord with her Notice of Hearing and evidence package on July 22, 2011.

While the two Applications relate to the same tenancy and may contain some of the same facts and issues the compensation sought by each party is very distinct and I find there is no necessity to hear both Applications at the same time.

Further, I find the tenant knew in October 2010 that she wanted to file an Application to claim for moving expenses. I also find, based on the tenant's testimony that she was

out of the country in May 2011 and on the landlord's evidence that the landlord's Application was delivered by Canada Post on April 18, 2011 and as such I find the tenant was served with notice of this hearing prior to her May departure.

Residential Tenancy Branch Rule of Procedure #3.5 a) stipulates that all evidence must be served on the respondent party and the Residential Tenancy Branch at least 5 days prior to the hearing. The term "at least" does not include the day the party receives the evidence; the day of the hearing or any weekend days. As such, the latest date the tenant could serve the landlord would be July 21, 2011.

Rule #3.5 b) does allow for a 2 day service when the date of filing an Application does not allow the 5 day rule to apply. However, based on my findings above there was no reason that the tenant could not have submitted her application any time from October 27, 2010 onward and as such, I adjourn all the matters related to the tenant's Application (File #XXXXXX) to be reconvened before me at a future date.

I will include in this decision a copy of a Notice to Reconvene the Hearing to both parties and I have advised both parties that they may submit any further evidence, in accordance with the Rules of Procedure for that hearing.

During the hearing, the tenant asserted that the previous decision (File #XXXXXX) included adjudication by the DRO of the landlord's claim for the wardrobes and blind installation because he had submitted the same documents that he has submitted to this hearing into evidence. However, upon review of the previous decision I find that it included no reference to the landlord's claim and, in fact, the decision was in regard solely to the tenant's Application and the landlord's claim has not been adjudicated.

Issue(s) to be Decided

In this hearing, the issues to be decided are whether the landlord is entitled to a monetary order for compensation for damage or loss and to recover the filing fee from the tenant for the cost of the Application for Dispute Resolution, pursuant to Sections 37, 67, and 72 of the *Residential Tenancy Act (Act).*

Background and Evidence

The tenancy began on July 16, 2010 and ended on September 30, 2010.

The landlord seeks compensation for the “re-installation” of blinds removed by the tenant at the end of the tenancy and for compensation for the removal of two wardrobes the landlord states belong to the rental property.

The parties acknowledge the blinds had been removed by the tenant’s moving company during her move out and when it was determined they should not have been removed the blinds were returned.

The tenant asserts that the moving company offered to reinstall at little or no cost to the landlord but that the landlord failed to accept this offer. In her opening remarks the landlord’s agent testified that the tenant had made this offer but that she did not accept it as these were custom blinds and she wanted them professionally installed.

Later the agent stated that the movers or tenant had not made the offer but that even if they had they would have refused because she wanted them professionally installed and did not trust the tenant’s recommendation due her feelings regarding the tenant’s choice of painters earlier in the tenancy.

The tenant points out that the landlord has submitted only an estimate from October 2010 and no invoice or receipt for the work ever being completed and accuses the landlord’s agent of presenting false testimony. The landlord testified that when the installer completed the work it was invoiced on a bill for work done in the landlord’s residence as well as the rental unit.

In relation to the two wardrobes, the landlord is claiming the tenant removed two wardrobes at the end of the tenancy that belonged to the rental unit. The tenant contends that she was informed by the previous tenant who “fraudulently rented her the rental unit” prior to this tenancy that the wardrobes were his and she could keep them.

The tenant also asserts that because the landlord did not complete a move in condition inspection that listed all the items that were in the unit, he is not entitled to claim them now. In addition the tenant claims that she repeatedly asked the landlord for a list of items that belong to the house and that he failed to produce such a list.

Analysis

To be successful in a claim for loss or damages the burden is on the applicant to provide sufficient evidence to establish the following 4 points:

1. That a loss or damage exists;

2. That the loss or damage results from a violation of the *Act*, regulation or tenancy agreement;
3. The value of the damage or loss (there is no requirement to prove the work has been completed or money spent on the loss or damage); **and**
4. The steps taken, if any, to mitigate that damage or loss.

Section 37 of the *Act* requires a tenant who is vacating the rental unit to leave the unit reasonably clean, and undamaged except for reasonable wear and tear. I accept the tenant or her mover removed the blinds from the rental unit, in contravention of Section 37. The repair required would be to reinstall the blinds.

I note the landlord provided no evidence to suggest that the movers had damaged the blinds or the rental unit when they removed them, it would be reasonable to expect the installation would not result in any damage.

I accept the landlord has established the value to reinstall these items to be $420.00 based on the estimate suffered. However and despite the landlord's agent's confusing testimony on this matter, I find the landlord failed to do all that would be considered reasonable to mitigate the loss as is required under Section 7 of the Act by failing to accept the re-installation be completed by the movers. I therefore dismiss this portion of the landlord's application.

I accept based on the testimony of both the landlord and the tenant that the wardrobes were in the rental unit at the start of this tenancy. As to the tenant's claim that the landlord cannot claim for them as he did not complete a move in condition inspection report that provided a list of items and fixtures in the house, I note that there is no requirement under the *Act* or regulations that requires a landlord to provide a list of household fixtures.

I accept the landlord's position that it is unlikely that a tenant who describes a person as the one who fraudulently rented her the rental unit would accept his word that specific fixtures in the house belong to him; particularly if he did not take them with when he vacated the rental unit.

I also find the tenant has provided conflicting testimony in that she stated that her fraudulent landlord told her that the blinds and the wardrobes were his and yet at the end of the tenancy the tenant returned the blinds that had been removed, implying she accepted this landlord owned the blinds and yet maintains the wardrobes do not.

As such, I accept the wardrobes were the landlords and the tenant had no right to remove them or sell them as both parties confirmed that she had done. I accept the landlord has establish a loss for their removal; that the loss results from a violation of Section 37 of the Act; that the landlord has established the value of that loss to be $1,174.00 (as per the quote from the furniture store submitted by the landlord); and there was nothing the landlord could have done to mitigate the loss.

Conclusion

For the reasons noted above, I find the landlord is entitled to monetary compensation pursuant to Section 67 and I grant a monetary order in the amount of **$1,224.00** comprised of $1,174.00 compensation for the wardrobes and the $50.00 fee paid by the landlord for this application.

This order must be served on the tenant. If the tenant fails to comply with this order the landlord may file the order in the Provincial Court (Small Claims) and be 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: July 29, 2011.

Residential Tenancy Branch