



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

Decision

Dispute Codes:

MNDC, MNSD, FF

Introduction

This Dispute Resolution hearing was convened to deal with an Application by the tenant for a monetary order for the return of double the security deposit retained by the landlord.

Despite being served in person on May 25, 2011, the respondent landlord did not appear and compensation for damages and loss.

Issue(s) to be Decided

The issues to be determined based on the testimony and the evidence are:

- Whether the tenant is entitled to the return of the security deposit pursuant to section 38 of the Act.
- Whether the tenant is entitled to be compensated for damages and loss

Background and Evidence

The tenant testified that the tenancy began on November 1, 2010 with rent of \$850.00 with a security deposit of \$212.50. The tenant testified that a previous hearing was held on the landlord's application for a monetary order against the tenant and the landlord's application to keep the deposit was dismissed. Although it was found at the prior hearing that the landlord was not entitled to keep the deposit, the deposit was not returned to the tenant. The tenant is now seeking a monetary order that the landlord refund double the security deposit.

With respect to the tenant's monetary claim for damages and loss, the tenant testified that this was based on the landlord's failure to secure the tenant's suite or call police when intruders were vandalizing the suite in the tenant's absence. The tenant testified that she was taken away to the hospital in an unconscious state with both the police and the landlord on the site at the time. The tenant stated that there would be an expectation that the landlord would then lock up her suite, knowing that she was

incapacitated. However, according to the tenant, the landlord evidently left the unit unlocked and as a result vandals entered and took or destroyed some of the tenant's possessions. The tenant testified that, although the landlord heard the intruders late at night, she neglected to call the police. The tenant feels that the landlord did not meet the obligations under the Act and should therefore be ordered to compensate the tenant for her losses..

Analysis

In regard to the return of the security deposit and pet damage deposit, I find that section 38 of the Act states that, within 15 days after the later of the day the tenancy ends, and the date the landlord receives the tenant's forwarding address in writing, the landlord must either repay the security deposit or pet damage deposit to the tenant with interest or make an application for dispute resolution claiming against the security deposit or pet damage deposit. In this case, I find that, based on the previous hearing data, the landlord did make an application keep the deposit within the deadline. However, the landlord's claim was rejected and the monetary application was dismissed.

Given the above, I find that the tenant is entitled to the return of her security deposit in full in the amount of \$212.50.

In regard to the tenant's claim for damages I find that, Section 7 of the Act states that, if a tenant or a landlord does not comply with this Act, the regulations or the 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 to order payment under these 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 or tenancy agreement and that this non-compliance resulted in costs or losses, such as a reduction in services, 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

- a. Proof that the damage or loss exists,
- b. Proof that this damage or loss happened solely because of the actions or neglect of the Respondent in violation of the Act or agreement

- c. Verification of the actual amount required to compensate for the claimed loss or to rectify the damage.
- d. 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 onus was on the tenant, to prove 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 landlord. Based on the evidence, I find that the tenant did suffer a substantial loss through no fault of their own. However, I find that the evidence offered in support of this claim failed to satisfy element 'b' of the test for damages. Although one would naturally expect a landlord to at least secure the door after seeing that the tenant was incapacitated and taken away in an ambulance or to call police for suspicious activity, I find that there is no provision in the Act requiring a landlord to protect the tenant's property in the tenant's absence. Therefore I must find that the tenant did not sufficiently prove that the landlord had violated the Act resulting in the claimed loss.

Given the above, I find that the tenant's monetary claim for compensation has no merit under the Act, and must therefore be dismissed.

Conclusion

Based on the testimony and evidence presented during these proceedings, I find that the tenant is entitled to compensation of \$212.50. 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: September 01, 2011.

Residential Tenancy Branch