



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

Decision

Dispute Codes:

MNDC

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant for monetary compensation for loss of value and use of the rental and damages

Despite being properly served with the Notice of Hearing by registered mail sent on August 31, 2011, the landlord did not appear.

Issue(s) to be Decided

The issue to be determined based on the testimony and the evidence is whether the tenant is entitled to monetary compensation under section 67 of the Act for damages or loss and a retro-active rent abatement.

The burden of proof is on the applicant to prove all of the claims and requests contained in the tenant's application.

Background and Evidence

The tenancy began on August 1, 2010 and ended on August 5, 2011. The rent was \$750.00 and a security deposit of \$350.00 was paid.

The tenant testified that they came home after a camping trip at the end of July 2011 to find that their unit was contaminated by a back-up of sewage. The tenant testified that the tenants contacted the property manager but nothing was done and the manager ceased responding to them. The tenant testified that the manager later sent an email stating that he was no longer acting on behalf of the landlord. A copy of this communication was in evidence.

The tenant testified that they did not feel that the unit was fit for habitation and on August 5, 2011 they engaged an inspector to assess the extent of the damage and whether or not the unit was safe. A copy of the report is in evidence and the tenant is claiming reimbursement of the site assessment fee in the amount of \$140.00.

The tenant testified that they had already paid their rent for August, but were unable to reside on the premises and the tenant is therefore claiming a rent abatement of \$750.00.

The tenant testified that they were forced to relocate on short notice and had to place their possessions in storage. The tenant is claiming compensation of \$210.56 for the storage costs and an addition \$100.00 loss for having to attend to the task of moving.

The tenant testified that a friend of the owner contacted them by email however, they were never given the owner's address. In order to send their Notice to vacate and provide their forwarding address, along with a request for the return of their security deposit, the tenant stated that they found it necessary to do a search through the land registry office and are claiming the cost of \$10.55.

The tenant testified that, although they provided a written forwarding address to the landlord sent by registered mail on August 6, 2011, their security deposit was never returned and the tenant is therefore claiming a refund of double the deposit under the Act.

The tenant is claiming the \$40.50 cost of postage and the filing fee of \$50.00. The total amount of the tenant's claim is \$2,001.61 and the tenant is seeking a monetary order for this amount against the landlord.

Analysis - Monetary Compensation

The tenant was requesting a rent abatement for the reduction of value of the tenancy given the disruption and reduced quality of the tenancy for the period in question and other damages stemming from the incident.

Section 7 of the Act states that if a landlord or tenant does not comply with this Act, 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 to order payment under these circumstances.

I find that in order to justify payment of damages under section 67, the Applicant has a burden of proof to establish that the other party did not comply with the agreement or Act and that this non-compliance resulted in costs or losses to the Applicant, pursuant to section 7. The evidence 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 tenant to prove a violation of the Act and a corresponding loss.

I find that the landlord and tenant had contracted for a tenancy that included a rental unit that was comfortable and liveable. I find that through a flooding incident that was not caused by the landlord nor by the tenant, the premises being provided were compromised to the extent that the tenants felt it necessary to vacate. I find that the tenants clearly suffered a loss of value to the tenancy during August thereby justifying a rent abatement for the month of August in the amount of \$750.00.

Section 32 of the Act requires a landlord to provide and maintain residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law.

In this instance I find that there were deficiencies in the condition of the unit, under both the Act and the contract and rectifying these problems was the duty of the landlord..

Section 13(2)(e) of the Act requires the landlord to provide contact information and a service address for the landlord. Section 33(2) states that a landlord must post and maintain in a conspicuous place on the residential property, or give to the tenant in writing, the name and phone number of a person the tenant is to contact for emergency repairs. I find that in this situation the property manager ceased representing the landlord the landlord did not ensure that the tenant was provided with a contact.

Having found that the landlord violated the Act, I further find that the tenant suffered a loss as a result. I find that all elements of the test for damages were met and the tenant is entitled to the following compensation: \$140.00 for the site assessment, \$210.56 for the storage costs, \$100.00 loss for moving and \$10.55 for the title search, for these additional damages totaling \$461.11.

In regard to the claim for postage, I find that the only recoverable expenditures related to the preparation of a dispute resolution proceeding allowed under the Act would be the filing fees paid by the applicant. I find that the claim for postage, must be dismissed.

In regard to the return of the security deposit and pet damage deposit, I find that section 38 of the Act is clear on this issue. 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.

The Act states that the landlord can only retain a deposit if the tenant agrees in writing the landlord can keep the deposit to satisfy a liability or obligation of the tenant, or if, after the end of the tenancy, the director orders that the landlord may retain the amount.

I find that the tenant did not give the landlord written permission to keep the deposit, nor did the landlord make application for an order to keep the deposits.

Section 38(6) provides that If a landlord does not comply with the Act by refunding the deposit owed or making application to retain it within 15 days, the landlord may not make a claim against the security deposit and must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

I find the tenant's security deposit was \$350.00 and the landlord failed to follow the Act by wrongfully retaining the funds being held in trust for the tenant. I find that the tenant is therefore entitled to compensation of double the deposit, amounting to \$700.00.

I find that the tenant is entitled to \$1,961.11 comprised of \$750.00 rent abatement for August, \$461.11 for other damages, \$700.00 refund of double the security deposit and the \$50.00 cost of this application.

Conclusion

Based on the testimony and evidence discussed above, I hereby issue a monetary order in favour of the tenant in the amount of \$1,961.11. This order is final and binding and must be served on the landlord. If necessary, it may be enforced through Small Claims Court if necessary.

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 30, 2011.

Residential Tenancy Branch