



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC MNSD

Introduction

This hearing dealt with an Application for Dispute Resolution by the Tenant to obtain a Monetary Order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement and for the return of his security deposit.

The parties appeared at the teleconference hearing, acknowledged receipt of evidence submitted by the other, gave affirmed testimony, were provided the opportunity to present their evidence orally, in writing, and in documentary form.

Issue(s) to be Decided

1. Has the Tenant met the burden of proof to obtain a monetary order pursuant to sections 38 and 67 of the *Residential Tenancy Act*?

Background and Evidence

At the outset of the hearing the Landlord advised his property manager was not able to attend today's hearing and that his resident manager, the person who had firsthand knowledge of what transpired during this tenancy, felt he did not need to attend this hearing as the Landlord would provide the testimony.

The Tenant testified that the Landlord and/or resident manager did not comply with my Orders that were issued in my March 14, 2011 decision from the March 10, 2011 hearing and because of this he felt he could no longer reside in this rental building. Sometime around the end of May or beginning of June 2011 he completed the Landlord's form to end his tenancy in thirty days and vacated the property July 1, 2011.

The Tenant advised the resident manager attended the rental unit to conduct a walk through at which time he requested his security deposit to be returned. He was told the office would return his deposit in two weeks if he provided the resident manager with his forwarding address that day. He provided his address and has not received his security deposit back.

The balance of his \$5,000.00 claim is to cover his costs for having to throughout his bed and sofa because of the mice infestation and to cover his stress and costs for having to move and argue with everyone about this situation. He acknowledged that his furniture was not new and that he has not replaced the furniture.

The Landlord confirmed they did not submit documentary evidence and wished to rely on his affirmed testimony in defence of the Tenant's claim. He stated he could not provide firsthand knowledge of what transpired so I gave him leave to call his resident manager and request that he sign into the hearing to provide testimony about what transpired. The resident manager did not sign into the hearing despite being requested to do so. The Landlord claims he is not aware of what the resident manager's practise is for when a tenant ends a tenancy.

The Landlord advised the following: the Tenant entered into a fixed term tenancy agreement and vacated the property in June 2011 before the end of the fixed term; the Tenant did pay a security deposit; the Landlord lost rent for June and July; the resident manager has told him that the work that was ordered to be completed in the March 2011 decision was completed, the pest control company attended June 7 and June 27, 2011; he is not aware of any written paper provided by the Tenant to advise he was moving out; he has not received the Tenant's forwarding address; the Tenant displayed abusive behaviour towards the resident manager.

Analysis

A party who makes an application for monetary compensation against another party has the burden to prove their claim. Awards for compensation are provided for in sections 7 and 67 of the *Residential Tenancy Act*.

I have carefully considered the documentary evidence which included a receipt dated September 4, 2010 which indicates the Tenant paid \$397.50 as a security deposit and copies of the dispute resolution hearing document and application from the March 2011 hearing.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

In this case, the Tenant has the burden to prove he provided the Landlord with his forwarding address in writing and that the Landlord failed to complete the required repairs by the deadline set out in my March 14, 2011 decision. Accordingly, the only

evidence before me was verbal testimony and I find the disputed verbal testimony insufficient to meet the Tenant's burden of proof.

With respect to the Tenant's claim for the return of his security deposit in the absence of any proof that a forwarding address was given to the Landlords in writing, and in the presence of disputed testimony, it is my finding that, at the time that the Tenant applied for dispute resolution, the Landlord was under no obligation to return the security deposit and therefore this application is premature. Accordingly I dismiss the Tenant's claim for the return of his security deposit, with leave to reapply.

At the hearing the Tenant stated that the address on the application for dispute resolution is his present forwarding address; therefore I find the Landlord is now considered to have received the forwarding address in writing as of today November 1, 2011 and the Landlord is required to administer the security deposit in accordance with section 38 of the *Residential Tenancy Act*.

In regards to the balance of the Tenant's claim I find there to be insufficient evidence before me and in the presence of disputed verbal testimony I find the Tenant has not met the burden of proof to substantiate his claim for damages. Accordingly the balance of the Tenant's \$5,000.00 claim for damages is dismissed, without leave to reapply.

Conclusion

I HEREBY DISMISS the Tenant's claim for the return of his security deposit, with leave to reapply.

I HEREBY DISMISS the remainder of the Tenant's claim for damages, without leave to reapply.

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: November 01, 2011.

Residential Tenancy Branch