



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

Decision

Dispute Codes: MNSD, MND, FF

Introduction

This Dispute Resolution hearing was convened to deal with an Application by the tenant for the return of double the security deposit under the Act and a cross application by the landlord for a monetary order for money owed or compensation for damage or loss under the Act for \$604.36 in addition to retaining the \$400.00 security deposit.

Both the landlord and tenant were present and gave testimony in turn.

Issues to be Decided for the Tenant's Application

The issue for the tenant's application is whether the tenant is entitled to receive a monetary order for the return of the security deposit retained by the landlord.

Issues to be Decided for the Landlord's Application

The issue to be determined for the landlord's application based on the evidence is whether or not the landlord is entitled to monetary compensation for damages.

Background and Evidence

Tenant's Claim

The tenancy began in January 2003 and a security deposit of \$400.00 was paid at that time. The current rent was \$1,600.00 per month.

The parties testified that the rental unit changed ownership on April 1, 2011 when the respondent landlord named in this application had sold the building. The new owner took over and became the landlord over the applicant. However, the new landlord/owner was not named as a respondent in this application and was never served with the Notice of Hearing documents.

The tenant testified that he vacated the unit on February 1, 2012 and made a request for the return of the security deposit from his current landlord. However, according to the tenant, his current landlord, who was the new owner, stated that, when he purchased the residence, no credit for the tenant's security deposit was ever transferred to the new owner. The tenant testified that, for this reason, he was now seeking the return of his security deposit from the former landlord.

Landlord's Claim

The landlord testified that the tenant's security deposit was used up because of rental arrears and the tenant's failure to fulfill the terms of a work contract between the parties.

The landlord testified that the unit was left damaged by the tenant and supplied photos of damaged flooring and an estimate for the repairs. The tenant disputed the claims and pointed out that the landlord had only supplied estimates and that no receipts for the expenditures were included in the landlord's evidence.

Analysis: Security Deposit

In regard to the return of the security deposit, I find that section 38 of the Act provides 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.

The Act states that the landlord can only retain a deposit if the tenant agrees in writing that it can be kept 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.

In the Act, the definition of "**landlord**", includes any of the following:

- (a) the owner of the unit, owner's agent or another who, on behalf of the landlord,
 - (i) permits occupation of the rental unit under a tenancy agreement, or
 - (ii) exercises powers and performs duties under this Act, the tenancy agreement or a service agreement;
- (b) the heirs, assigns, personal representatives and successors in title to a person referred to in paragraph (a);
- (c) a person, other than a tenant occupying the rental unit, who
 - (i) is entitled to possession of the rental unit, and
 - (ii) exercises any of the rights of a landlord under a tenancy agreement or this Act in relation to the rental unit;
- (d) *a former landlord, when the context requires (my emphasis)*

In addition to the above, I find that section 93 of the Act specifically states that the obligations of a landlord under this Act with respect to a security deposit or a pet damage deposit run with the land or reversion. (my emphasis).

In this instance I find that the tenant's security deposit was no longer being held in trust by the former landlord because there was a sale of the property. As of the date of the sale, all obligations and responsibilities for the rental business were divested from the seller, (previous landlord), and transferred to the new owner, (most current landlord).

In the context of this application, I find that all provisions of the Residential Tenancy Act relating to the security deposit would only apply to the current owner who officially became the tenant's landlord on April 1, 2011.

With respect to the purchase and sale contract and transfer of the security deposit trust funds, I find that this would be a matter between the former owner, named as respondent in the dispute, and the current owner, who was *not* named as a party in these proceedings before me. I find that I have no jurisdiction to consider the terms of the contract they made as it does not constitute an agreement covered by the Act. I also find that the purchase contract between the two respective owners is not material to the issue of the security deposit refund under section 38 of the Residential Tenancy Act for funds held in trust since January 1, 2003.

If the new owner, who became the tenant's landlord in April 2011, was not duly compensated by the seller for the transfer of the financial obligation for the security deposit held on behalf of the tenant, that issue would have to be resolved between the seller and the purchaser of the property through the appropriate legal forum.

I find that the tenant's application against the named respondent, who was the previous landlord until April 1, 2011, must be dismissed and I do so with leave. The applicant tenant is still at liberty to pursue a refund of his security deposit by making a dispute resolution application against the most current landlord who took over in April 2011.

Analysis – Landlord's Monetary Claim

In regard to an Applicant's right to claim damages from another party, Section 7 of the Act states that if a landlord or tenant fails to comply with the Act, the regulations or 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 authority to determine the amount and order payment under the circumstances.

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

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 amount paid 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 claimant, that being the landlord, to prove the existence of 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 respondent. .

I find that the tenant's role in causing damages could best be established with a comparison of the condition before the tenancy began with the condition after the tenancy ended, through submission of move-in and move-out condition inspection reports containing both party's signatures. However, I find that the landlord only supplied photos of the condition after the end of the tenancy. In addition, I find that the landlord had not yet incurred the claimed expenditures and only submitted estimated costs for repairs into evidence, not invoices verifying payment.

Given the above, I find that the landlord has failed to sufficiently meet the burden of proof and failed to satisfy all elements of the test for damages. Therefore I find that the landlord's application must be dismissed.

Conclusion

Based on the evidence, I hereby dismiss the tenant's application with leave to reapply.

Based on the testimony and evidence presented during these proceedings, I hereby dismiss the landlord's application *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: June 26, 2012.

Residential Tenancy Branch