



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

Decision

Dispute Codes:

MNSD, MNDC, 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 damage or loss under the Act for \$3,670.00.

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

Issues to be Decided for the Tenant's Application

Is the tenant entitled to the return of the double security deposit?

Issues to be Decided for the Landlord's Application

Is the landlord entitled to monetary compensation under section 67 of the Act.

Background and Evidence

The tenancy began on September 1, 2011 and rent was \$1,850.00. A security deposit of \$925.00 was paid. A tenancy agreement was submitted into evidence. The document indicated that there was a two-page addendum with additional terms. However, included in the evidence was a third page to the addendum with handwritten terms that the landlord testified had been agreed to by the tenant. The landlord stated that the tenancy agreement indicating that there were only 2 pages in the addendum was an error. The landlord pointed out that, although the third page of the addendum was not signed by the parties, it was a part of the tenancy agreement and some of the notations on the document had even been written by one of the co-tenants. This co-tenant was not present at the hearing. The tenant who participated in the hearing testified that she had never seen the third page of the addendum and disputed that it was ever part of the agreement.

The landlord's evidence also included written testimony, a copy of a cheque and a copy of a statement with respect to some drywall work that had evidently been completed prior to the tenancy.

The landlord submitted photographs showing a portion of the grounds and an invoice dated May 1, 2012 for \$2,320.00 to remove livestock waste and debris, including charges for a backhoe, dump box and landfill fees. The tenant testified that she had never received any photos at all in the evidence served on her by the landlord.

The landlord submitted a copy of an one-page report dated July 3, 2012 relating to a plumbing inspection that transpired on or after in April 8, 2012. There was no invoice for the service, but the landlord seeks \$350.00 for the alleged cost of this report.

The landlord testified that the plumbing report was conducted by an expert in the field and concluded that there were no mechanical failures with the water or waste pipes and that the flooding must have been due to operator error. According to the landlord, this report supports that the tenant was at fault.

Also in evidence from the landlord was a quotation for various repairs in the unit amounting to \$6,972.00. The landlord's evidence indicated that these repair costs would be covered by their insurance, with the exception of a \$1,000.00 deductible charge, which is being claimed.

The tenant submitted a copy of an inspection report that the tenant alleges was completed without the landlord's participation, a copy of a Two Month Notice to End Tenancy for Landlord's Use dated January 31, 2012, proof of service and written testimony.

The tenant denied doing anything unusual with respect to using the plumbing fixtures and stated that, in fact, she was not even home when the water apparently flooded the unit. The tenant does not agree that the flood had been caused by any violation on their part of the Act through willful neglect or misuse of the fixtures.

The landlord acknowledged that the tenant had provided a written forwarding address shortly after the tenancy ended and admitted that the security deposit had not been refunded within 15 days.

Analysis: Tenant's Security Deposit Claim

With respect to the return of the security 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 make an application for dispute resolution claiming against the security 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. I find that the tenant did not give the landlord written permission to keep the deposit.

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 or any pet damage deposit, and must pay the tenant double the amount of the security deposit. (my emphasis)

I find that the tenant's security deposit was \$925.00 and I find that the landlord failed to follow the Act in retaining the funds being held in trust for the tenant. I find that the tenant must therefore be refunded an amount that is double the deposit and is entitled to receive \$1,850.00.

Analysis – Landlord's Monetary Claim

With respect to the landlord's claim for compensation for flood damage, I find that both parties agreed that the unit was damaged by flood, but did not agree in regard to whether or not the tenant was the cause.

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 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 landlord, to prove that the damage/loss stemmed directly from a violation of the agreement or a contravention of the Act on the part of the tenants

Section 6 of the Act states that a party can make an application for dispute resolution seeking enforcement of the rights, obligations and prohibitions established under the Act or the tenancy agreement.

Section 58 of the Act also states that, except as restricted under the Act, a person may make an application for dispute resolution in relation to a conflict dealing with: (a) rights, obligations and prohibitions under the Act; OR (b) *rights and obligations under the terms of a tenancy agreement*. (My emphasis)

I find that with respect to the landlord's claim regarding the damage to the pasture, the landlord was evidently relying on a specific term on page 3 of the tenancy agreement addendum that imposed certain obligations on the tenant. However, the tenant denied that this page of the document was part of the original agreement.

I find that the main tenancy agreement was type-written and indicated that there were only 2 additional pages to the addendum and both parties signatures were under this paragraph. I find that the two pages of the addendum, following the main agreement, were also typewritten with numbered paragraphs and were initialled by both parties at the bottom of the page. However, the third page, purported by the landlord to also be part of the addendum containing additional terms, was handwritten, had no numbered paragraphs and was not signed nor initialled. Moreover, the tenant gave testimony that she never saw the third page of the addendum and never agreed to the terms in contained, which related to the care and use of the pasture areas

For this reason, I find that the landlord was not able to adequately prove that the tenant had violated any section of the Act or any term in the tenancy agreement with respect to the upkeep of the pasture and the claim failed to satisfy element 2 of the test for damages. Accordingly, the portion of the landlord's application seeking \$2,320.00 compensation for the pasture clean-up must be dismissed.

With respect to the damage caused by water flooding the unit in February 2012, I find that section 32 of the Act imposes responsibilities on both the landlord and the tenant for the care and cleanliness of a unit.

A landlord must provide and maintain residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law, having regard to the age, character and location of the rental unit to make it suitable for occupation by a tenant. A tenant must maintain reasonable health, cleanliness and

sanitary standards throughout the rental unit. While the tenant of a rental unit must repair damage that is caused by the actions or neglect of the tenant, a tenant is not required to make repairs for reasonable wear and tear.

Section 37(2) of the Act states that, when a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.

With respect to the landlord's claim for the \$350.00 costs of the plumbing inspection, I find that the process of investigating problems or damage to a rental unit is an obligation that normally falls to the landlord under the Act. In any case, the landlord did not furnish a copy of the invoice to show that the payment was made and the claim would therefore fail to satisfy element 3 of the test for damages.

In regard to the flood damage, I find that, through the process of elimination, the landlord and the landlord's inspector concluded that the tenant must have done something, other than normal use of the fixtures, to cause water to flood from the upstairs bathroom causing extensive damage to the rental unit. The report states:

"It is the conclusion....that the damage appears to be caused by operator's error to control the proper use of the fixtures in the upstairs bathroom as there is no physical damage to the plumbing fixtures and components."

However, the tenant disputed this conclusion and testified that nothing was done by the tenant to cause the flood.

I find that the landlord was not able to precisely identify exactly what the tenant did, other than normal use of the fixtures, to cause the flooding. I find I must accept the tenant's testimony that she was not in her ensuite bathroom upstairs or even in the building when the flooding was discovered by others. I also accept her claim that she has no knowledge of what cause this extreme situation. I find that the expert's thorough examination was not conducted until weeks later on April 8, 2012, and the one-page report was not issued until July 3, 2012.

Given the above, I find that, the landlord has not sufficiently met the burden of proof to establish that the tenant had violated the Act by negligently or intentionally causing a flood that damaged the rental premises. I find that the landlord's claim for the \$1,000.00 deductible does not satisfy element 3 of the test for damages. Accordingly, this claim must be dismissed.

Conclusion

Based on the testimony and evidence presented during these proceedings, I find that the tenant is entitled to the return of double the tenant's security deposit in the amount of \$1,850.00. I further find that the tenant is entitled to be reimbursed the \$50.00 cost of filing the application for total monetary compensation of \$1,900.00.

I hereby grant a monetary order in favour of the tenant for \$1,900.00. This order must be served on the landlord and may be filed in the Supreme Court, (Small Claims), and enforced as an order of that Court.

The landlord's application is hereby dismissed in its entirety 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: August 02, 2012.

Residential Tenancy Branch