



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 for monetary compensation for loss of value of the rental suite during the tenancy. The tenant contends that this was due to the landlord's failure to provide agreed-upon cable services, reimbursement for the cost of repairs done by the tenant, reimbursement for items stolen by another resident, moving expenses and costs incurred in filing this application. The tenant was also seeking a refund of her \$325.00 security deposit and her \$200.00 pet damage deposit.

Both parties appeared at the hearing and gave evidence.

Issue(s) to be Decided

Is the tenant entitled to monetary compensation under section 67 of the Act for damages or loss, a retro-active rent abatement and the return of the security deposit?

Background and Evidence

The tenancy began in August 2010 with rent of \$650.00. A security deposit of \$325.00 and pet-damage deposit of \$200.00 were paid. The landlord issued a Notice of Rent Increase to raise the rent \$28.00 from \$650.00 to \$678.00 effective March 1, 2012. The tenancy was ended by the tenant and she moved out at the end of April 2012, at which time the landlord received the tenant's written forwarding address.. No written tenancy agreement was submitted into evidence and the tenant testified that the landlord failed to put the agreement in writing. The tenant testified that no move-in and move-out condition inspection reports were completed by the landlord, despite the tenant's request to do so.

The tenant stated that, although she paid the rent to the landlord, the landlord required that she deal with another renter in the building about various other issues, such as utilities. This individual was included in the application and named as a respondent. However, according to the tenant this other resident was not her landlord. Therefore, the tenant's claims will only proceed against the respondent named who is the actual landlord.

The tenant stated that the landlord continued to refuse to refund her security and pet damage deposits, and after waiting for these funds to be returned by the landlord, she finally made an application for dispute resolution. The tenant is claiming the refund in this application

The tenant's application indicated that she was seeking compensation for cable charges that the parties had evidently agreed would be a service included in the rent. This was only a verbal commitment as there was no formal written tenancy agreement.

The tenant also listed repairs and improvements that she evidently completed in the suite and for which she was seeking reimbursement.

The tenant's application included a list of her personal possessions that were apparently taken without the tenant's permission and specified the values of each item that was listed, for which the tenant seeks compensation.

The tenant's moving costs being claimed, according to the tenant, are based on the fact that she was forced to move out due to ongoing harassment, and she feels that the landlord should therefore be liable for the costs of relocating.

The landlord acknowledged that the tenant's forwarding address was received in April 2012 and that the security and pet damage deposits were not returned. The landlord did not agree with the tenant's monetary claims and had submitted evidence of damage to the suite.

Analysis – Security Deposit

With respect 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, a 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 it 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 an 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 or pet damage deposit, and must pay the tenant double the amount of the security deposit, pet damage deposit, or both.

I find that the tenant's security and pet deposits totaled \$525.00 and that the landlord failed to follow the Act by deciding to keep the funds without an order to do so. I find that the tenant is therefore entitled to double the deposit, amounting to \$1,050.00.

With respect to the landlord's own claim of damages and rent owed, I find that I am not able to hear nor consider any monetary claims by the landlord during these proceedings because the matter before me was convened to deal with the *tenant's* application under section 38 of the Act, and there was not any application filed by the landlord before me. That being said, I must point out that the landlord is at liberty to make a separate application if the landlord wants to initiate a formal claim for compensation for damages and loss pursuant to section 67 of the Act.

Analysis - Monetary Compensation

With respect to monetary claims, 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. 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.

The burden of proof is on the tenant to prove a violation of the Act caused her losses.

Rent Abatement for Cost of Cable

With respect to the tenant's claim that T.V. cable services were included in the rent under a term in the tenancy agreement, I find that Section 62 (1) of the Act grants a Dispute Resolution Officer the authority to determine disputes in relation to which the

Residential Tenancy Branch has accepted an application for dispute resolution, and (b) any matters related to that dispute that arise under the Act or a tenancy agreement.

However, in this instance, the tenancy agreement was based on a verbal contract without written terms. However, according to the Act, oral terms contained in verbal tenancy agreements may still be recognized and enforced. Section 1 of the Act, defines “tenancy agreement” as follows:

"tenancy agreement" means an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a rental unit, use of common areas and services and facilities, and includes a licence to occupy a rental unit;

Although verbal tenancy agreements are recognized as valid agreements under the above definition, I find that section 6(3) of the Act states that a term of a tenancy agreement is not enforceable if: (a) the term is inconsistent with this Act or the regulations, (b) the term is unconscionable, or (c) the term is not expressed in a manner that clearly communicates the rights and obligations under it. (my emphasis)

Because the tenancy term regarding whether or not the cable was to be included in rent was not written down, I find that under section 6(3)(c), and cannot be enforced as it is unclear. Therefore this portion of the tenant’s application must be dismissed.

Repair Reimbursement

I find that section 32 of the Act requires that the 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.

However, there is no provision in the Act permitting a tenant to make repairs or do improvements and be reimbursed, except under specific restricted circumstances involving emergency repairs under section 33 of the Act. In any case, during the tenancy, this tenant had the option of forcing the landlord to make necessary repairs under section 32 of the Act by making an application for dispute resolution. Therefore, I find that the tenant’s claim for repairs fails the test for damages and must be dismissed.

Compensation for Stolen Items

In regard to the tenant’s possessions that were taken, I find that, while this occurred at the rental unit and during the tenancy, this is not a matter governed by the Residential Tenancy Act. For this reason, I find I must decline jurisdiction with respect to the

dispute about theft of the personal property in question. The tenant is at liberty to seek a remedy through another legal forum, such as police or a claim in Small Claims Court.

Moving Costs

With respect to the tenant's claim for moving costs claimed on the basis that she was forced to relocate due to ongoing harassment from the landlord, I find that section 28 of the Act does state that a tenant is entitled to quiet enjoyment, free from significant interference.

However, I find that this tenant could have made an application for dispute resolution, without ending the tenancy, to obtain an order to force the landlord to comply with the Act. To satisfy element 4 of the test for damages, the expectation would be that the tenant take reasonable steps to minimize her loss. Terminating the tenancy would be considered a last resort. I find that the claim for moving costs must be dismissed.

Costs of the Application

With the exception of the cost of filing the application, I find that the tenant's claims for reimbursement of transportation, photos or other expenses for preparing for the Dispute Resolution Hearing, are not compensable expenditures covered under any provision of the Act and must therefore be dismissed. I do find that the tenant is entitled to be reimbursed the \$50.00 cost of the application.

Overpaid Rent

Section 63 of the Act states that a dispute resolution officer has authority to determine any matters related to the dispute that arise under the Act or a tenancy agreement and may make any finding of fact or law that is necessary or incidental to making a decision or an order under the Act and may make any order necessary to give effect to the rights, obligations and prohibitions under the Act, including an order that a landlord or tenant comply with this Act, the regulations or a tenancy agreement and an order that this Act applies.

I find that the tenant submitted a copy of a Notice of Rent Increase showing that the landlord had purported to increase the rent by \$28.00 from \$650.00 to \$678.00 effective March 1, 2012. The tenant testified that she paid the extra \$28.00 rent for March 2012 and April 2012.

Section 43 of the Act prescribes how rent may be increased. A landlord may impose a rent increase only up to the amount (a) calculated in accordance with the regulations, (b) ordered by the director on an application under subsection (3), or (c) agreed to by the tenant in writing. (my emphasis)

In this case I find that the \$28.00 rent increase shown on the Notice exceeded that permitted under the Act. I find that the rent increase prescribed by the regulations was 4.3% for 2012 which would limit the maximum increase to \$27.95. Accordingly, I find that the landlord's Notice of Rent Increase was not valid and must be cancelled.

Section 43(5) of the Act states that, if a landlord collects a rent increase that does not comply with this Part, the tenant may deduct the increase from rent or otherwise recover the increase. In this instance I find that the tenant is entitled to a refund of \$28.00 for each month of March and April 2012, for a total of \$56.00.

Given the above and based on the evidence and testimony, I find that the tenant is entitled to total compensation of \$1,156.00, comprised of \$1,050.00 for double the security deposit, \$56.00 refund of overpaid rent and the \$50.00 cost of the 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 \$1,156.00. This order must be served on the landlord and 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 19, 2012.

Residential Tenancy Branch