



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

Decision

Dispute Codes:

MNDC, MNSD, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord to retain the tenant's \$750.00 security deposit.

The landlord and one of the named co-tenants appeared and gave testimony during the conference call.

Preliminary Matter

The landlord testified that on August 23, 2012, she had served the hearing package and evidence to each of the two co-tenants named on the style of cause, separately by registered mail, sent to the forwarding address provided by one of the co-tenants on August 2, 2012. Registered mail is deemed served in five days. The date of service would therefore be August 28, 2012. The landlord testified that one of the two packages was returned.

The co-tenant who appeared at the hearing testified that the other co-tenant, named in the application, did not reside at the forwarding address used by the landlord to send the registered mail.

Sections 88 and 89 of the Act determine the method of service for documents. The Landlord has applied for a Monetary Order which requires that the landlord serve each one of the tenants as set out under Section 89(1). Tenants are jointly and severally responsible for the payment of rent under a tenancy agreement.

However, only one of the two co-tenants had been successfully served with the hearing documents. As the landlord has not sufficiently proven service of the Notice of Hearing upon the missing co-tenant, I find that the landlord's monetary claim can only proceed against the co-tenant, she was able to prove had been properly served with the Notice of Hearing.

Issue(s) to be Decided

Is the landlord entitled to monetary compensation for damages?

Background and Evidence

The tenancy began on May 1, 2012 with rent of \$1,600.00 and a security deposit of \$750.00 was paid. The tenancy ended on July 31, 2012. According to the tenant, a written forwarding address was provided to the landlord on August 2, 2012 at 4:43 p.m.

The landlord stated that, although the tenant did provide his written forwarding address, she cannot confirm the actual date it was received because she does not have a copy of the original communication she received from the tenant. Despite this missing evidence, the landlord testified that she is certain that her application for dispute resolution to keep the security deposit for damages, made on August 17, 2012, did within 15 days of receiving the tenant's forwarding address.

The landlord testified that the unit was in a clean condition when the tenant moved in. The landlord testified that, when the tenancy ended, the unit was left in need of cleaning. The landlord stated that, although no move-in and move-out condition inspection reports were completed and signed by the parties, a move-in "walk through" was done with the tenants present. The landlord testified that she tried to arrange a move out condition inspection with the tenant at the end of the tenancy, but the tenant refused to cooperate and a move-out examination was done after the tenant had vacated. The landlord testified that, because the tenant did not leave the unit in a reasonably clean condition, the landlord had to employ a professional cleaner at a cost of \$420.00. In support of the claim, the landlord submitted into evidence a copy of the invoice issued by the cleaner.

The tenant disputed that the rental unit was left in an unclean condition. According to the tenant, the landlord had no justification to keep the \$750.00 security deposit and the tenant feels that it should have been returned within 15 days, following the date he gave the landlord his forwarding address.

Analysis

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 does not comply with the Act, the regulations or the 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.

In a claim for damage or loss under the Act, the party making the monetary claim 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 reasonable steps were taken to mitigate or minimize the loss or damage in compliance with section 7(2) of the Act.

In this instance, the burden of proof is on the claimant, that being the landlord.

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

In this instance, the landlord has alleged that the tenant left the unit not reasonably clean in contravention with the Act, costing \$420.00, while the tenant's position was that the unit was left in a reasonably clean condition.

I find that the issue of whether the unit was left in a reasonably clean and undamaged condition would be established through the submission of completed copies of the move-in and move-out condition inspection reports featuring both party's signatures.

Sections 23(3) and 35 of the Act for the move-in and move-out inspections require the landlord to jointly complete condition inspection reports in accordance with the regulations and both the landlord and tenant must sign the report, after which the landlord must give the tenant a copy of the report in accordance with the regulations. Part 3 of the Regulation goes into significant detail about the specific obligations regarding how and when the Start-of-Tenancy and End-of-Tenancy Condition Inspection Reports must be conducted. A space must be provided on the report where the tenant can indicate that he or she either agrees to the contents of the inspection report or disagrees.

In this instance I find that neither a move-in condition inspection report, nor a move-out condition inspection report had been completed. I find the failure to comply with the applicable sections of the Act requiring that these reports be done, has hindered the landlord's claim for compensation preventing this monetary claim from satisfying element 2 of the test for damages.

Although I accept the invoice of August 14, 2012 showing that the landlord paid to have the unit cleaned, this evidence does not establish that the tenant failed to comply with section 37 of the Act.

I find that the disputed verbal testimony about the final condition of the unit will not suffice to meet the landlord's burden of proof in relation to element 2 of the test for damages.

Given that the landlord has not succeeded in meeting all four elements of the test for damages, I find that the landlord's monetary claim must be dismissed and the security deposit must be refunded to the tenant forthwith.

With respect to the amount of the security deposit refund, 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 to the tenant , 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 it 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. I accept the tenant's testimony that the landlord failed to make an application for an order to keep the deposit within the required 15 days under the Act.

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, pet damage deposit, or both, as applicable.

I find that the tenant's security deposit with interest was \$750.00 and, because the tenant is entitled to a refund of double the deposit, I hereby grant a monetary order to the tenant pursuant to section 38 in the amount of \$1,500.00. This order must be served on the applicant landlord and may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

Conclusion

The landlord's application is dismissed in its entirety without leave and the tenant is granted a monetary order for double the security deposit.

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, 2012.

Residential Tenancy Branch