



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

Decision

Dispute Codes: MNDC, MNSD, FF

Introduction

This Dispute Resolution hearing was convened to deal with an Application by the tenant for a monetary order for money owed or compensation for damage or loss under the Act and an order for the return of the security deposit retained by the landlord.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained. The participants had an opportunity to submit documentary evidence prior to this hearing, and the evidence has been reviewed. The parties were also permitted to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the affirmed testimony and relevant evidence that was properly served.

Issue(s) to be Decided

- Is the tenant entitled to the return of the security deposit under section 38 of the Act?
- Is the tenant entitled to monetary compensation under section 67 of the *Act*?

Background and Evidence

Submitted into evidence was, a written statement from the tenant with the details of her claim. Also in evidence was a package from the landlord including a written statement and photos of the suite.

The tenancy began in August 2012 and ended on February 28, 2013. Rent was \$750.00 and a \$200.00 security deposit was paid. No written tenancy agreement was signed.

The tenant testified that when she took the tenancy, the landlord assured her that access to the internet was included in her rent. However, according to the tenant, despite repeated complaints to the landlord the tenant was never able to access the internet from her suite. The tenant is requesting a retro-active rent abatement of \$50.00

per month for not having a facility that was included in the tenancy. The tenant's total claim for the failure to provide internet is \$300.00.

The landlord acknowledged that she did have a WiFi account and lived in the same building. The landlord agreed that internet was promised as a service included in the rent. The landlord testified that, although she and others had no problem with accessing the internet, she was not able to determine why the tenant could not do so. The landlord stated that attempts to rectify the problem did not succeed.

The tenant testified that she vacated the rental unit on February 28, 2013 and provided a written forwarding address delivered to the landlord on March 4, 2013. The tenant testified that the landlord did not return the deposit and the tenant is claiming a refund of double the \$200.00 security deposit under the Act, in the amount of \$400.00.

The landlord testified that the tenant's deposit was retained because the tenant gave inadequate notice to move and for cleaning and repair costs to the suite.

The landlord acknowledged that the tenant did not sign a form or letter agreeing to forfeit any of the security deposit, nor did the landlord make an application for dispute resolution to obtain an order to keep the deposit.

Analysis

Claim for Damages and Loss

In respect 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 this Act, the regulations 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.

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, and
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 tenant, 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 landlord. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. Finally it must be proven that the claimant took reasonable steps to address the situation and to mitigate the damage or losses that were incurred.

Based on the evidence and testimony, I find that the tenant has established that the landlord promised internet services as part of the tenancy, but failed to provide this service. I find that the tenant has met the burden of proof to support compensation under the Act for six months without access to internet services and I find that the tenant is entitled to compensation of \$300.00.

Claim for Return of Security Deposit

In regard 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, 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 the landlord can keep the deposit 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 application for an order 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, pet damage deposit, or both, as applicable.

I find that the tenant's security deposit was \$200.00 and that the landlord did not comply with the Act by arbitrarily keeping the security deposit without an order to do so. Accordingly I find that the tenant is entitled to be paid double the security deposit of \$200.00 for compensation in the amount of \$400.00.

Based on the testimony and evidence presented during these proceedings, I find that the tenant is entitled to compensation of \$750.00, comprised of \$300.00 rent abatement for six months without internet, \$400.00, representing double the security deposit and the \$50.00 cost of the application. This order must be served on the Respondent and may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court if not paid.

In regard to the landlord's testimony and evidence alleging that the tenant should compensate the landlord for cleaning and repairs to the suites, I find that I am not able to hear, nor determine, any claims made by the landlord as this hearing was convened on the tenant's application and no application from the landlord is before me. The landlord is at liberty to pursue claims for compensation by making her own application for dispute resolution.

Conclusion

The tenant is successful in the application and is granted a monetary order for a refund of double the security deposit and for a retro-active rent abatement.

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 13, 2013

Residential Tenancy Branch