



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDC, FF

Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties.

The Landlord filed for an order to keep the security deposit in partial satisfaction of the claim, for a monetary order for money owed or compensation under the Act or tenancy agreement and to recover the filing fee for the Application.

The Tenant filed for a monetary order for return of double the security deposit under section 38 of the Act, and to recover the filing fee for the Application.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts and issues in this decision.

Preliminary Issues

The Landlord sent in a letter requesting that his claim be increased from the \$1,750.00 sought in his Application, to \$2,275.00. The Landlord did not amend his Application. A fundamental principle of natural justice requires that the person making a claim clearly notify the person claimed against of the amount being claimed. Under the Residential Tenancy Act the claim is disclosed in the Application for Dispute Resolution. If the Landlord wanted to increase his claim, he was required under the Act to amend the Application. In other words, the Landlord was not able to increase his claim by using a letter and this request is dismissed without leave to reapply.

The Landlord also requested monetary amounts for taking time off work. However, the Landlord did not take time off work and instead had an Agent appear. In any event the Landlord is unable to claim against the Tenant for wage loss, as the Tenant is not his employer and the income the Landlord receives from being a landlord is from his rent for the rental unit. Therefore, this portion of the Landlord's claim is dismissed without leave as well.

Issue(s) to be Decided

Is the Landlord entitled to the allowable relief sought?

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

Background and Evidence

The parties entered into a homedrawn, two paragraph tenancy agreement, dated April 1, 2013. The Tenant was to pay \$1,350.00 per month and she paid the Landlord a security deposit of \$675.00 on or about April 15, 2013. Rent was due on the first day of the month. The Landlord required a one month notice if the Tenant was to purchase a house, and if a third party was going to rent the property the Landlord wanted to be informed within a months' time.

The Tenant gave a one month Notice to End Tenancy to the Landlord on May 31, 2013, and vacated the rental unit on June 30, 2013.

The parties agree there were no written condition inspection reports performed in accordance with the Act. The Tenant and someone for the Landlord walked through the rental unit; however, this was not done in accordance with the requirements of the Act.

The Landlord is claiming the Tenant was required to give him two months notice to end the tenancy as they had a verbal agreement that this was a six month tenancy. The Landlord is claiming for a loss of rent for one month because of the Tenant ending the tenancy before the six months in the amount of \$1,350.00. The Landlord is also claiming for cleaning costs, his salary as described above and the filing fee, totalling \$1,750.00.

The Tenant denies damaging the rental unit and testified she left it clean.

The Tenant is claiming for the return of double the security deposit, in accordance with section 38 of the Act. The Tenant testified she sent the Landlord a letter on July 16,

2013, requesting the deposit and providing him with a forwarding address to return the deposit to. The Landlord sent the Tenant a letter explaining he had made certain deductions for cleaning the rental unit and damage to blinds, and returned the sum of \$198.46 to the Tenant by cheque. The Tenant has cashed the cheque.

The Tenant testified she did not give the Landlord permission to keep any of the deposit.

Analysis

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities.

Awards for compensation are provided in sections 7 and 67 of the *Act*. Accordingly, an applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

In this instance, the burden of proof is on both parties to prove the existence of the damage/loss and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the other party. Once that has been established, the claiming party must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the claiming party did everything possible to minimize the damage or losses that were incurred.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

Based on all of the above, the evidence and testimony, and on a balance of probabilities, I find as follows.

I dismiss all the claims of the Landlord without leave to reapply.

The evidence before me indicates a month to month tenancy was established.

Under the Act a fixed term tenancy of six months, as the Landlord alleges, must be in writing. In this case, the Landlord only required one month of notice from the Tenant according to the written terms of their tenancy agreement. I find the Landlord has insufficient evidence to prove this was a fixed term tenancy. Furthermore, even if the Landlord and the Tenant had orally agreed to a six month tenancy (which I do not find), this oral agreement would not be valid, since the Landlord and the Tenant cannot agreed to avoid following the Act which requires fixed term tenancies be in writing.

I also dismiss the claims of the Landlord for cleaning or repairing anything in the rental unit. In the absence of properly completed, written condition inspection reports, the Landlord would have had to prove the condition of the rental unit before this tenancy began and the condition of it at the end of the tenancy after the Tenant vacated. I find the Landlord had insufficient evidence to establish the condition of the rental unit at the start of the tenancy. I also find the Landlord did not establish the Tenant left the unit unreasonably clean or damaged, by supplying receipts or photographs to show any damages to the rental unit or any that cleaning was required, or that the Landlord had to spend money on these claims.

As for the Tenant's claims, I find that the Landlord is in breach of section 38 of the Act.

There was no evidence to show that the Tenant had agreed, in writing, that the Landlord could retain any portion of the security deposit.

There was also no evidence to show that the Landlord had applied for arbitration, within 15 days of the end of the tenancy or receipt of the forwarding address of the Tenant, to retain a portion of the security deposit as required under section 38. The Landlord had the Tenant's address and returned to her a portion of the deposit on or about August 4, 2013, and did not file a claim to keep the deposit or a portion of it until September 27, 2013. This is well beyond the 15 days.

In any event, by failing to perform incoming or outgoing condition inspection reports in accordance with the Act, the Landlord extinguished the right to claim against the security deposit for damages, pursuant to sections 24(2) and 36(2) of the Act.

The Landlord received the Tenant's forwarding address and made deductions from the deposit and returned the balance to her of \$198.46. I find the Landlord had no right or authority to do this under the Act. The security deposit is held in trust for the Tenant by

the Landlord. At no time does the Landlord have the ability to simply keep the security deposit because they feel they are entitled to it or are justified to keep it.

The Landlord may only keep all or a portion of the security deposit through the authority of the Act, such as an order from an Arbitrator, or the written agreement of the Tenant. Here the Landlord did not have any authority under the Act to keep any portion of the security deposit. Therefore, I find that the Landlord is not entitled to retain any portion of the security deposit.

Therefore, I find the Landlord has breached section 38 of the Act. The Landlord is in the business of renting and therefore, has a duty to abide by the laws pertaining to Residential Tenancies.

Having made the above findings, I must Order, pursuant to section 38 and 67 of the Act, that the Landlord pay the Tenant the sum of **\$1,201.54**, comprised of double the security deposit ($2 \times \$675.00 = \$1,350.00$) plus the Tenant's \$50.00 fee for filing this Application, ***less \$198.46, which the Landlord had returned to the Tenant.***

Conclusion

The Tenant is given a formal Order in the above terms and the Landlord must be served with a copy of this Order as soon as possible. Should the Landlord fail to comply with this Order, the Order may be filed in the Small Claims division of the Provincial Court and enforced as an Order of that Court.

This decision is final and binding on the parties, except as otherwise provided under the Act, and 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: December 16, 2013

Residential Tenancy Branch

