



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

Decision

Dispute Codes:

MNDC, MNSD, OLC, LRE

Introduction

This Dispute Resolution hearing was convened to deal with an Application by the tenant for a monetary order for compensation for damage or loss under the Act and an order to suspend or set conditions on the landlord's right to access the rental unit.

The application was amended to include a request for the return of the tenant's security deposit in addition to other damages, as the tenant was no longer living in the rental unit.

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 pursuant to section 38 of the Act?
- Is the tenant entitled to monetary compensation under section 67 of the *Act* for damages or loss?

Background and Evidence

The landlord confirmed that the tenancy began on October 1, 2013 and rent was \$450.00 with \$230.00 security deposit being held in trust.

No written tenancy agreement was submitted into evidence. The tenant stated that he was never provided with a copy of a written agreement. The landlord stated that they

had signed a 2-month fixed-term tenancy agreement that expired at the end of November 2103. This document was not in evidence and the tenant denied ever receiving a written agreement. The landlord stated that they did not realize that they were required to submit evidentiary documents upon which they intended to rely.

The tenant testified that he received Notices to end tenancy from the landlord, none of which were valid, since the landlord failed to issue these eviction Notices on the approved forms. The landlord acknowledged that they did create their own forms terminating the tenancy and served these on the tenant.

The tenant testified that, he was surprised on February 20, 2014, to find that the landlord had removed all of his possessions and changed the locks. The tenant testified that he was suddenly left homeless with no place to go. The tenant pointed out that he had already paid his February 2014 rent in full and that this payment had been accepted by the landlord.

The tenant's testimony was supported by the landlord's testimony and that of he landlord's witness, who verified that the tenant's possessions were packed up on February 21, 2014 and placed in the carport, at which time the locks on the rental unit were changed by the landlord thereby prohibiting the tenant from re-entering his rental unit.

The landlord testified that the decision to remove the tenant was based on previous "notices" given to the tenant and the fact that the fixed term tenancy was supposed to end on November 30, 2013, pursuant to the written agreement they had both apparently signed. The landlord testified that the tenant's conduct was threatening and they felt that ending the tenancy was a safety matter.

The landlord acknowledged that they did not take any measures to ensure that their actions were in compliance with the Residential Tenancy Act and did not consult with the Residential Tenancy Branch or other legal sources of information.

The tenant stated that he later returned to the property on March 2, 2014 and attempted to personally give the landlord a written forwarding address in front of a witness, but the landlord refused to accept the paper.

The tenant is requesting a refund of the \$230.00 security deposit and \$450.00 in compensation for expenses incurred in being forced out of his rental unit in violation of the Act.

Analysis

Claim for Return of Security Deposit

In regard to the return of the security deposit, I find that section 38 of the Act states that, 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 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 landlord obtains an order to retain the amount.

Based on the testimony of both the landlord and tenant, I find that the tenant did not give the landlord written permission to keep the deposit, nor did the landlord make any application for an order to keep the deposit.

I accept the tenant's testimony that an attempt was made On March 21, 2014 to give the landlord the written forwarding address in person, and that the landlord would not accept it. I find that the landlord is not at liberty to merely refuse to accept the written forwarding address when it is offered. Given the above, I find that the landlord would have 15 days to refund the deposit and that this 15-day window would commence as of March 21, 2014.

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.

I find that the tenant's written forwarding address was not offered to the landlord until March 21, 2014, after the tenant filed the application and that the 15 days would expire as of April 6, 2014.

Based on the evidence I find that the tenant's security deposit was \$230.00 and under the Act the tenant is entitled to a refund of \$230.00.

Claim for Damages and Loss

The tenant is claiming compensation for wrongful eviction in an amount equivalent to one month rent of \$450.00.

With 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 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 claimant, that being 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.

Based on the evidence and testimony provided by the landlord, it is clear that the tenancy was suddenly ended in a manner that was not in compliance with the Act.

Section 44 of the Act states that a landlord cannot end a tenancy, except in accordance with the Act. Section 52(e) of the Act requires that when a Notice to End Tenancy is issued by a landlord it must be "*in the approved form*".

In this situation I find that the landlord had purported to be ending the tenancy for cause, which is covered under section 47 of the Act. However, the landlord had not used the approved form and had merely issued a letter to end the tenancy.

I find that the tenancy was still in force and the tenant was entitled to possession of the unit at the time the landlord removed the tenant's possessions.

I find that even if the landlord had issued the proper Notice on the correct form and in total compliance with the Act, the landlord would still not be permitted under the law to take forceful possession of the rental unit because section 57 of the Act states that if the tenant continues to occupy a rental unit after the tenant's tenancy is ended the landlord is not legally allowed take possession of the rental unit that is occupied by the over-holding tenant unless the landlord is first granted a legal Order of Possession through Dispute Resolution and then successfully obtains a valid writ of possession issued under the Supreme Court Civil Rules. (My emphasis)

Section 31 of the Act states that a landlord must not change locks or other means that give access to residential property unless a) the tenant agrees to the change and; (b) the landlord provides the tenant with new keys or other means of access to the rental unit. Section 30 of the Act states that a landlord must not unreasonably restrict access to residential property the tenant of a rental unit that is part of the residential property and section 28 of the Act states that a tenant is entitled to quiet enjoyment including, but not limited to, rights to the following: (a) reasonable privacy; (b) freedom from unreasonable disturbance; (c) exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with section 29 and; (d) use of common areas for reasonable and lawful purposes, free from significant interference.

In addition to the above, section 29 of the Act states that landlord must not enter a rental unit that is subject to a tenancy agreement for any purpose unless: (a) the tenant gives permission at the time of the entry or not more than 30 days before the entry; (b) at least 24 hours and not more than 30 days before the entry, the landlord gives the tenant written notice that includes the purpose for entering, which must be reasonable, the date and the time of the entry, which must be between 8 a.m. and 9 p.m. unless the tenant otherwise agrees, the landlord has an order of the director authorizing the entry, the tenant has abandoned the rental unit or an emergency exists and the entry is necessary to protect life or property.

Given the landlord's testimony and evidentiary submissions, confirming that they arbitrarily terminated this tenancy, locked the door and prohibited the tenant's access, I find that the tenant's burden of proof has been met to conclude that the landlord willfully contravened sections 44, 52, 57, 31, 30 and 28 of the Act by forcing the tenant to move out of the unit prematurely without following due process under the law. I find that there is sufficient proof to establish that the landlord's multiple violations of the Act did result in a monetary loss by the tenant.

In regard to the landlord's allegation that there was a pressing safety issue, I find that, in cases where this is a factor, a tenancy can be terminated early by a landlord without Notice under the Act in such situations. In this case, however, I find that the landlord did not follow the correct process by making an application for dispute resolution and justifying an order under the applicable section of the Act.

Because the landlord's termination of the tenancy in no way complied with the Act, I find that the test for damages has been satisfied and the tenant is rightfully entitled to \$450.00 for the illegal termination of the tenancy.

In addition to the above, I find that the tenant had paid rent for the month of February in full, but was deprived of the use of his home as of February 20, 2014. Accordingly, I

find that the tenant is entitled to a rent abatement of 8 days during February in the amount of \$118.37.

Based on the testimony and evidence presented during these proceedings, I find that the tenant is entitled to compensation of \$798.35 comprised of \$230.00 for the security deposit refund, \$450.00 compensation for forced removal of the tenant and \$118.37 rent abatement for February 2014.

I hereby grant the tenant a monetary order for \$798.35. This order must be served on the Respondent in person or by registered mail and if unpaid, may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

Conclusion

The tenant is partly successful in the application and is granted monetary compensation and the refund of 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: March 31, 2014

Residential Tenancy Branch

