



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

Decision

Dispute Codes:

MNSD, MND, MNDC, 0, FF

Introduction

This Dispute Resolution hearing was convened to deal with an Application by the tenant for the return of double the security deposit under the Act and monetary damages to compensate for postage and the tenant's time. The hearing was also to deal with a cross application by the landlord seeking a monetary order for damage or loss under the Act.

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.

Issues to be Decided for the Tenant's Application

Is the tenant entitled to the return of the security deposit pursuant to section 38 of the Act?

Issues to be Decided for the Landlord's Application

Is the landlord entitled to monetary compensation under section 67 of the Act.

Preliminary Matter – Previous Decisions

The landlord submitted documentary evidence verifying that there was a previous hearing held on May 16, 2013, dealing with cross applications from the landlord and tenant, the outcome of which was a monetary award in favour of the landlord for \$752.16 for rental arrears owed by the tenant to the end of May 2014. The landlord testified that the tenant did not pay the monetary order before vacating the rental unit on September 30, 2013 and it is still outstanding at the present time.

The tenant testified that, on September 25, 2013, there was a subsequent hearing on the tenant's application seeking to cancel a 10-Day Notice to End Tenancy for Unpaid Rent, to cancel a One Month Notice to End Tenancy for Cause, compensation for damages or loss under the Act, an order to force the landlord to provide repairs and services, an order to restrict the landlord's right of entry, an order allowing the tenant to access the unit, an order allowing the tenant to change the locks, a rent abatement and reimbursement for utilities.

The tenant was partially successful and was granted a monetary order of \$550.00 against the landlord. The tenant pointed out that the order has been served on the landlord but they have failed to pay the tenant this amount. During the hearing held on September 25, 2013, it was also established that the tenant would vacate the unit on September 30, 2013 and the tenant did vacate on that date.

The tenant testified that the previous monetary order for \$762.16 ordered at the May 16, 2013 hearing was subsequently "expunged" at the September 25, 2013 hearing because it was part of a negotiated settlement in which the tenant agreed to vacate the unit effective September 30, 2014. The tenant was not able to identify a specific statement or finding in the September 25, 2013 decision to support this position.

Accordingly, I find that there was a previously awarded monetary order for \$762.16 against the tenant that was still outstanding when the tenancy ended on September 30, 2014, and that I accept the landlord's testimony this monetary order has never been paid by the tenant..

I also find that there is an outstanding monetary order against the landlord in favour of the tenant stemming from the September 25, 2013 dispute resolution decision, that still remains unpaid by the landlord.

Background and Evidence

Tenant's Claim For Security Deposit

The tenancy began in February, 2012 with rent set at \$1,250.00 per month.. A security deposit of \$625.00 was paid. The tenant vacated at the end of September 2013.

The tenant's submission indicated that he had provided the landlord with a written forwarding address at the end of the tenancy but the landlord failed to refund the deposit within 15 days. The tenant is therefore claiming a refund of double the deposit and other expenditures.

The landlord disputed the tenant's claim that a valid forwarding address was provided, as the tenant had supplied the dispute address just vacated, as the forwarding address.

The landlord pointed out that the tenant had failed to pay the monetary order for \$762.16 served on the tenant after the May 16, 2013 hearing.

Landlord's Claim For Damages

In regard to the landlord's monetary claim for damages, the landlord acknowledged that they failed to complete A move-in condition inspection report but stated that this was due to the tenant's failure to cooperate by signing the report.

The landlord stated that, although a and move-out condition inspection report was completed and signed by both the tenant and the landlord's agent, it was not completed accurately because the landlord was away and the agent had no knowledge of the original state of the unit when the tenant moved in. The tenant had submitted a copy of the move-out condition inspection report that verified that the unit was clean and in good repair at the end of the tenancy. However, according to the landlord, the tenant had actually left unrepaired damage to the unit and failed to leave it reasonably clean as required under the Act. The landlord submitted before and after photos of the unit in support of their position and also submitted copies of invoices.

The landlord is claiming monetary compensation of \$1,413.34 for cleaning and repairs.

Analysis: 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 pet damage deposit to the tenant with interest or make an application for dispute resolution claiming against the security deposit or pet damage deposit.

I find that the tenant did furnish a forwarding address in writing at the end of the tenancy. I find that, regardless of the fact that this address was the rental unit that the tenant formerly occupied, the landlord was entitled to consider this a valid address for the purpose of serving documents. Sections 88 (d) and 89(d) of the Act which permits service:

“if the person is a tenant , by sending a copyto a forwarding address provided by the tenant”

However, I find that the landlord did not have to refund the tenant's security deposit nor obtain an order specifically authorizing the landlord to keep it because the Act permits the landlord to keep the tenant's security deposit if the tenant has failed to satisfy a Monetary Order by the end of the tenancy.

Section 38(3) of the Act provides that:

“A landlord may retain from a security deposit or a pet damage deposit an amount that:

(a) the director has previously ordered the tenant to pay to the landlord, and

(b) at the end of the tenancy remains unpaid.”

I find that the tenant's security deposit was \$625.00 and, under the Act, the landlord had the authority to keep the deposit as a credit towards the unpaid \$762.16 monetary award previously granted on May 16, 2013.

Given the above, I find that the tenant is not entitled to a refund of double the security deposit and the tenant's application must be dismissed.

Analysis – Landlord's Monetary Claim

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 fails to comply with the Act, the regulations or 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 authority to determine the amount and order payment under the 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

- a. Proof that the damage or loss exists,
- b. Proof that this damage or loss happened solely because of the actions or neglect of the Respondent in violation of the Act or agreement,

- c. Verification of the actual amount required to compensate for the claimed loss or to rectify the damage, and
- d. 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 landlord, 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 respondent.

I find that the tenant's role in causing damages is best established through a comparison of the rental unit's condition *before* the tenancy began, with the condition of the unit *after* the tenancy ended. In other words, through information contained on the move-in and move-out condition inspection reports signed by both parties.

Section 23(3) of the Act covering move-in inspections and section 35 of the Act for the move-out inspections state that the landlord must offer the tenant at least 2 opportunities, as prescribed, for the inspection. The Act places the obligation on the landlord to complete the condition inspection report in accordance with the regulations and the landlord and tenant must each sign the condition inspection report, after which the landlord must give the tenant a copy of that report in accordance with the regulations. Part 3 of the Regulations goes into significant detail about the specific obligations regarding how and when the Start-of-Tenancy and End-of-Tenancy Condition Inspections and Reports must be conducted.

In this instance, I find that the landlord admitted that a move-in condition inspection report was never completed.

I find the failure to comply with section 23 of the Act has hindered the landlord's ability to establish what damages were caused by the tenant during the tenancy and did not pre-exist.

In any case, I can't ignore the properly completed, signed, *move-out* condition inspection report submitted into evidence by the tenant. I find the report clearly verifies that the unit was left in a reasonably clean condition and in good repair.

Given the above I dismiss the landlord's claim for additional monetary damages.

It was determined that there was no need to hear testimony from the landlord's witnesses, as I accepted both the landlord's and the tenant's evidentiary submissions and merely applied the Act to the established facts of this dispute.

Based on the evidence before me, I find that the landlord is partly successful in the application as they proved entitlement under the Act to retain the tenant's security deposit under the circumstances before me. Therefore I find that the landlord is entitled to be reimbursed for the \$50.00 cost of the application.

Accordingly, I hereby grant a monetary order in favour of the landlord in the amount of \$50.00. This order must be served on the tenant and may be enforced through Small Claims Court if not paid.

Based on the testimony and evidence I hereby dismiss the tenant's application in its entirety without leave to reapply.

Conclusion

The tenant is not successful in their application seeking monetary compensation and the tenant's claim is dismissed without leave.

The landlord is partly successful in the cross application and is entitled to keep the tenant's security deposit. The remainder of the landlord's application for monetary compensation is dismissed without leave.

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: May 29, 2014

Residential Tenancy Branch

