



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

Decision

Dispute Codes:

MNSD, MNDC, FF

Introduction

This Dispute Resolution hearing was convened to deal with an application by the tenant seeking a monetary order for damage or loss under the Act for \$357.00 moving costs. The tenants was also seeking the return of double the \$325.00 security deposit as the deposit was not refunded within 15 days and the \$50.00 fee paid by the tenant for this application.

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

- 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 pursuant to *section 7* and *section 67* of the Act?

Background and Evidence

The tenancy began on December 3, 2013 and ended on December 3, 2013.

The tenant testified that their rent was due on the 2nd day of each month and the landlord issued a 10-Day Notice to End Tenancy for Unpaid Rent on December 2, 2013.

The tenant testified that he was forced to move out immediately as the landlord insisted on showing his room without giving the tenant 24 hours written Notice. For this reason, the tenant is claiming \$357 in moving costs.

The parties testified that that tenant provided a written forwarding address on December 3, 2013.

Submitted into evidence were copies of the 10-Day Notice to End Tenancy for Unpaid Rent, copies of communications, a receipt for moving costs and written testimony.

The tenant testified that the landlord did not refund the deposit and kept it without obtaining an order allowing the landlord to do so. The tenant is therefore claiming a refund of \$650.00, which is double the \$325.00 security deposit.

The landlord testified that the tenant's rent was due on the first day of each month. The landlord submitted a copy of the 10-Day Notice to End Tenancy for Unpaid Rent issued on December 3, 2013, not December 2, 2013.

The landlord stated that the tenant failed to pay rent for the month of December and that was why the 10-Day Notice to End Tenancy was issued. The landlord pointed out that the tenant's security deposit was kept because the tenant did not pay rent or give proper notice to vacate. The landlord testified that the purpose of showing the tenant's room was to find a tenant to mitigate the loss of rent caused by the tenant's failure to pay rent.

Analysis

Security Deposit Claim by Tenant

Section 38 of the Act states that within 15 days of the end of the tenancy and receiving the tenant's forwarding address a landlord must either:

- repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations; or
- make an application for dispute resolution claiming against the security deposit or pet damage deposit.

I find that the landlord retained the tenant's security deposit held in trust on behalf of the tenant without making an application to retain the deposit and obtaining an order to keep the funds for money owed by the tenant.

I find that under the Act, the landlord was not entitled to merely keep the 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, or if, after the end of the tenancy, the landlord obtains an order stating that the landlord may retain it. 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 must pay the tenant double the amount of the security deposit.

I find that the tenant's security deposit wrongfully retained by the landlord was \$325.00 and that under the Act the tenant is entitled to a refund of \$650.00 which represents double the deposit.

With respect to the landlord's argument that the tenant should pay the landlord for December 2013 rent, I find that the only application before me is that of the tenant's. The landlord did not submit a cross application making a monetary claim. However, the landlord is at liberty to make their own application for Dispute Resolution if they intend to seek damages from the tenant.

Analysis: Tenant's Claim for Moving Costs

In regard to rent, I find that section 26 of the Act states that rent must be paid when it is due, under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement. Through testimony from both parties it has been established that the tenant did not pay rent for December 2013 when it was due.

When a tenant fails to comply with section 26, section 46 of the Act permits the landlord to validly end the tenancy by issuing a Ten-Day Notice effective on a date that is not earlier than 10 days after the date the tenant receives it.

This section of the Act also provides that within 5 days after receiving a notice under this section, the tenant may either pay the overdue rent, in which case the notice has no effect, or dispute the notice by making an application for dispute resolution. In this instance I find that the tenant did neither.

The Ten-day Notice includes written instructions on page 2 informing the tenant about how and when a tenant may dispute the notice if the claim is not being accepted. Under the heading, "Important Facts", the form cautions that "*The tenant is not entitled to withhold rent unless ordered by a dispute resolution officer*".

In this instance I find that the tenant was in arrears at the time the Notice was served on December 2 or 3, 2013 and the tenant did not pay the arrears and in fact moved out without paying the arrears.

In any case, section 46(5) of the Act provides that if a tenant does not pay the rental arrears within 5 days or make an application for dispute resolution in accordance with the above, then the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and must vacate the rental unit to which the notice relates by that date.

The tenant is alleging that the landlord violated the Act by showing his room without provided 24 hours written Notice thereby forcing him to move out on December 3, 2013.

Section 29 of the Act states that a landlord must not enter a rental unit for any purpose unless the tenant gives permission at the time of the entry or at least 24 before the entry, the landlord gives the tenant written notice that includes the following information:

- (i) the purpose for entering, which must be reasonable;
 - (ii) the date and the time of the entry, which must be between 8 a.m. and 9 p.m. unless the tenant otherwise agrees;
- or an emergency exists and the entry is necessary to protect life or property.

In this instance, I find that the tenant had first violated the Act by not paying the rent for December 2013.

If I accept the evidence that the landlord failed to give 24 hours written Notice before showing the room, I would have to find that the landlord had also contravened the Act. However, the landlord's contravention of the Act would still not entitle the tenant to withhold rent and I find that it would not function nullify the Ten Day Notice to End Tenancy for Unpaid Rent .

Section 7 of the Act states that, if a landlord or tenant does not comply with the 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.

Therefore in order to justify payment of damages under section 67, the Applicant would be required to prove that the other party did not comply with the Act and that this non-compliance resulted in costs or losses to the Applicant, pursuant to section 7.

In the case before me, I find that the tenancy ended by virtue of a valid and enforceable 10-Day Notice, which the tenant accepted and never filed an application to dispute. I find that this tenancy was not terminated in violation of the Act.

Therefore, I find that there is no basis under the Act upon which to grant the tenant damages for the cost of moving and the tenant's claim for \$357.00 paid to the movers must be dismissed.

Based on the testimony and evidence presented during these proceedings, I find that the tenant is entitled to total monetary compensation of \$700.00, comprised of \$650.00 for double the security deposit wrongfully retained by the landlord and the \$50.00 fee paid by the tenant to file this application.

I hereby grant a monetary order in the amount of \$700.00 in favour of the tenant. This order must be served on the respondent and if unpaid may be enforced in Small Claims Court if necessary.

The remainder of the tenant's application is dismissed without leave.

Conclusion

The tenant is partially successful in the application and is awarded a refund of double the security deposit and the claim for damages is dismissed.

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: April 28, 2014

Residential Tenancy Branch

