Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes Landlords: MND, MNSD, FF
Tenant: MNR, MNDC, MNSD, O

Introduction

This hearing dealt with cross Applications for Dispute Resolution with both parties seeking monetary orders.

The hearing was conducted via teleconference and was attended by the landlord and his witness; the tenant, his advocate and witness; agents for the society named as a respondent in the landlord's Application. While the landlord's witness did call in to the hearing we were not ready to hear is testimony at that time and he provided me with contact information. However, when I attempted, twice, to call the witness in he could not be reached.

The landlord had named two respondents on his Application. While one of the named respondents was the tenant who is named on the tenancy agreement, the other named respondent is a society that provided the tenant support during his tenancy.

As the society was not a party to the tenancy agreement I find that the society cannot be named as a respondent to a residential tenancy matter. I therefore amend the landlord's Application to exclude the society as a named respondent.

The tenant's advocate noted the landlords filed their Application for Dispute Resolution on January 23, 2014 stating they were seeking a monetary order for damage to the rental unit in the amount of $9,980.00. The landlord did not provide a breakdown of what the claim was specifically for at any time prior to the hearing.

On May 2, 2014 the landlord submitted evidence to the Residential Tenancy Branch. Included in that evidence are two registered mail receipts one dated January 26, 2014 and one dated May 1, 2014. In the hearing the landlord confirmed that the January 26, 2014 receipt included only a copy of the hearing documents and his Application form and that the May 1, 2014 included all of his evidence.

Also included in that evidence is a document that outlines that the landlord believes the tenant owes the landlord more than $18,000.00 but still does not provide a breakdown for what exactly the landlord is claiming in this Application.

Section 59(2)(b) of the *Residential Tenancy Act (Act)* requires that an Application for Dispute Resolution must include full particulars of the dispute that is to be the subject of the dispute resolution proceedings. Section 59 (3) stipulates a person who makes an Application for Dispute Resolution must give a copy of that Application to the other party within 3 days of making it.

This requirement is to ensure, in the interest of natural justice, that the responding party has an opportunity to understand the claim against them in order to prepare for the hearing. While the Residential Tenancy Branch Rules of Procedure allow for evidence to be served after the initial Application is served, I find when an Application for Dispute Resolution does not disclose the full particulars of the claim and the applicant attempts to serve that evidence 1 week prior to the hearing, the respondent has not been sufficiently informed of the claim to make a reliable response.

In addition, in the case before me the evidence submitted by the landlord on May 2, 2014 does not clearly identify what makes up the landlord's claim for $9,980.00. In fact, I find that the landlord's explanation of the claim is even more confusing, in that he states he believes the tenant has caused him to suffer a loss of $18,000.00 but only is claiming $9,980.00 again without explaining what this amount relates to.

For the above reasons, I dismiss the landlord's Application in its entirety with leave to reapply at a future date.

In the tenant's Application the tenant has named as respondents both the building manager and the owner of the property. I confirmed with the building manager at the start of the hearing that the second named respondent was the owner of the property. I accept that both parties named as respondents in the tenant's Application are parties to the tenancy and as such are appropriately named.

The tenant filed his Application for Dispute Resolution on April 3, 2014. In an attachment to his Application he specifically identified that he was seeking a monetary order for the cost of emergency repairs ($504.50); return of his security deposit ($341.69); for compensation for the landlord failing to make repairs ($393.50); and for a previously awarded compensation ($150.00).

As such, I am satisfied that the tenant has complied with the requirements of Section 59(2)(b) and has provided the landlord with sufficient particulars to allow the landlord to prepare for this hearing.

The tenant confirmed that evidence was served to both the owner of building and the building manager by registered mail on May 1, 2014. The landlord testified that he did not receive the tenant's evidence. He testified that he had received registered mail at a time that would have corresponded with such service and because it did not have a return address he refused to accept the package.

The landlord objected to the consideration of the tenant's evidence because it was served late, pursuant to the Rules of Procedure. The remedy usually granted for the service of late evidence is to adjourn the hearing to allow the party time to respond. However, in the case before me, the landlord had refused to accept the evidence and as such he would not have access to review the evidence even if an adjournment were granted.

I find that the landlord's refusal to accept the tenant's evidence was a deliberate attempt to avoid service and as such I proceeded with the tenant's claim and have considered any relevant documentary evidence that has been provided by the tenant.

The landlord also suggested that the evidence provided by the society, which he had received, would be identical to the evidence that the tenant provided. I note however that the society only provided evidence to show that they were not a party to the tenancy and the tenant provided evidence in relation to his monetary claim.

I informed the landlord that I had reviewed the evidence from both the society and the tenant and assured him that it was completely different evidence. The landlord did not believe that the evidence was different but insisted that he was not accusing me of lying.

Issue(s) to be Decided

The issues to be decided are whether the tenant is entitled to a monetary order for emergency repairs; for return of the security deposit; for compensation for the landlord's failure to make repairs; and for a previously granted dispute resolution award, pursuant to Sections 32, 33, 38, 67, and 72 of the *Act.*

Background and Evidence

The landlord submitted into evidence a copy of a tenancy agreement signed by the parties on June 1, 2002 for a 7 month fixed term tenancy beginning on June 1, 2002 that converted to a month to month tenancy on January 1, 2003 that stated a security deposit of $330.00 was paid on may 22, 2002. The tenancy ended on December 23, 2014.

The tenant submitted evidence that he had provided his forwarding address to the landlord in a letter dated January 6, 2014 and confirming receipt of that letter by the landlord on January 15, 2014. The landlord did not dispute that he received the tenant's forwarding address at this time. The landlord's Application for Dispute Resolution was submitted to the Residential Tenancy Branch on January 23, 2014.

The tenant seeks return of his security deposit held and interest. The tenant's witness testified that the rental unit had been clean substantially at the end of the tenancy. The tenant has provided photographic evidence of the condition of the unit at the end of the tenancy.

The tenant submits that he had keys broken off in the lock to his rental unit on 3 occasions. The tenant submits the first time he asked the landlord to repair it and he didn't do anything. The second time he states the landlord outright refused and the third time he didn't even attempt to ask the landlord to have it repaired. The tenant has provided into evidence receipts from locksmiths dated November 16, 2013; November 27, 2013; and December 17, 2013 totalling $504.50.

The landlord submits that the tenant did approach him the first time but states that the tenant had already made the repair and then he never heard from the tenant again. He states that the tenant never even asked him for any reimbursement. He insists the tenant was lying.

The tenant also seeks compensation in the amount of 30% of his rent for 1 ½ months or $393.50 for the lack of heat for the period of November 13, 2013 to December 23, 2013 and no stove for the period November 28, 2013 to December 23, 2013. The tenant and his witness both confirmed that they had informed the landlord of the deficiencies and that the landlord failed to act.

The landlord submits that because the rental unit had bedbugs and cockroaches that he had written a letter to the society asking for them to confirm that if the landlord sent someone in to make the requested repairs that the society would guarantee that the service providers would not get sick. He states that he did not get a response and therefore he did not arrange to have the repairs made.

The tenant submits that there is no provision under the *Act* that allows a landlord to withhold the completion of repairs for any reason let alone for a response to such a letter.

The tenant submits that in a previous dispute resolution decision, dated November 18, 2013, the tenant was granted an award of $150.00 (a copy of the decision was provided into evidence). The decision notes that the tenant could deduct the amount from a future rent payment.

However, the tenant submits that he had already paid rent for December 2013 before he received a copy of the decision and because the tenancy then ended on December 23, 2013 he had no future rent payments that he could deduct the award.

The landlord submits that because the decision stated that he could deduct from a future rent payment and the tenant did not do that the landlord feels the tenant is not entitled to any money and has refused to provide payment of the $150.00.

Analysis

Section 38(1) of the *Act* stipulates that a landlord must, within 15 days of the end of the tenancy and receipt of the tenant's forwarding address, either return the security deposit

or file an Application for Dispute Resolution to claim against the security deposit. Section 38(6) stipulates that should the landlord fail to comply with Section 38(1) the landlord must pay the tenant double the security deposit.

As per the testimony and evidence provided by the tenant I accept the landlord received the tenant's forwarding address on January 15, 2014. As such, the landlord had until January 30, 2014 to file an Application for Dispute Resolution to claim against the deposit.

Despite the dismissal above of the landlord's Application that was submitted on January 23, 2014 that included seeking to retain the deposit, I find the landlord has complied with the requirement of Section 38(1).

However, as no decision has been made by an Arbitrator on a landlord's Application for Dispute Resolution confirming that the tenant owes the landlord any amounts for damage or lost revenues I find the landlord is not entitled to retain the deposit. I order the landlord must return the full deposit of $330.00 plus $11.69 interest as determined using the Deposit Calculator in the Residential Tenancy Branch Website.

Section 33 of the *Act* allows a tenant to have emergency repairs completed if the emergency repairs are needed; the tenant has made at least 2 attempts to phone the landlord or their agent and following those attempts the tenant has given the landlord reasonable time to make the repairs. A tenant may be compensated for the cost of these repairs if they have complied with the above requirements and submitted a written account of the repairs and a receipt for them to the landlord.

The section includes defining emergency repairs as: urgent; necessary for the health or safety or anyone or for the preservation or use of the residential property, and are made for the purpose or repairing major leaks in pipes or the roof; damaged or blocked water or sewer pipes or plumbing fixtures; the primary heating system; damaged or defective locks that give access to a rental unit; or the electrical systems.

While I accept the tenant had, in fact, had problems with his locks on the three occasions indicated I find that he had not made 2 attempts each, or on 2 occasions had not attempted to contact the landlord at all. As such, I find the tenant made the repairs without the knowledge of the landlord and he is therefore not entitled to reimbursement for the costs. I dismiss this portion of the tenant's claim.

Section 32(1) of the *Act* requires a landlord to provide and maintain residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law, and having regard for the age, character and location of the rental unit make it suitable for occupation by a tenant.

Based on the testimony provided by both parties, I find the landlord was aware of the complaints made by the tenant that there was no heat in the rental unit and that the

stove was not working. I acknowledge that the landlord felt that the rental unit had both cockroaches and bedbugs during this period of time.

However, I agree with the tenant's position that the *Act* does not allow the landlord to withhold repairs because a non-medical third party has failed to provide the landlord with confirmation that service providers will not get sick if they go to the rental unit. In fact, I find nothing in the *Act* that allows a landlord to set any type of condition before he makes a repair that he is aware of is required.

Therefore, I find the landlord had failed to comply with his obligations under Section 32 and as a result I find the tenant suffered a loss in the value of his tenancy. Because the repairs required were for heat and cooking, I find the tenant's estimate of 30% of the value of the tenancy is reasonable. I grant the tenant $393.50.

And finally, I accept the evidence before me that tenant did not receive a rent reduction from his last rent paid to the landlord that would satisfy the amount awarded to the tenant in the Decision of November 18, 2013.

While the Decision did instruct the tenant to reduce his next rent payment, this was chosen as a method of payment for the award by the Arbitrator. An inability by the tenant to recover the award in the manner instructed by the Arbitrator does not negate the landlord's obligation to provide the award. As such, I find the tenant is entitled to a monetary order for the previously awarded $150.00.

Conclusion

I find the tenant is entitled to monetary compensation pursuant to Section 67 and grant a monetary order in the amount of **$885.19** comprised of $341.69 security deposit and interest; $393.50 reduced value of tenancy; and $150.00 from the previous Decision award.

This order must be served on the landlord. If the landlord fails to comply with this order the tenant may file the order in the Provincial Court (Small Claims) and be enforced as an order of that Court.

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 09, 2014

Residential Tenancy Branch