



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

Decision

Dispute Codes: MNDC, MNSD, FF

Introduction

This Dispute Resolution hearing was convened to deal with an Application by the tenant for a monetary order for money owed or compensation for damage or loss under the Act and an order for the return of the security deposit retained by the landlord.

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 under section 38 of the Act?
- Is the tenant entitled to monetary compensation under section 67 of the *Act*?

Background and Evidence

Submitted into evidence was, a written statement from the tenant with the details of her claim. No evidence was received from the landlord.

The tenancy began approximately 2 and a half years ago and ended on February 28, 2014. Rent was \$2,600.00. No written tenancy agreement was signed by the parties. According to the landlord, no security deposit was paid by the tenant.

In explaining why they did not collect a security deposit, the landlord stated that this was because the tenant arrived crying and in financial distress. The landlord did not explain why they failed to prepare a written tenancy agreement as required under the Act.

The tenant disputed the landlord's testimony that no deposit was paid. The tenant stated that they originally rented the lower suite and paid a security deposit of \$450.00 and later took over the main floor at which time they paid a further deposit of \$800.00. The tenant testified that The landlord is holding a total deposit of \$1,250.00.

The parties both confirmed that the tenant gave the landlord a written forwarding address which was mailed on March 5, 2014. Records from Canada Post show the mail was successfully delivered on March 6, 2014.

The tenant testified that the landlord failed to refund their \$1,250.00 security deposit within 15 days and the tenant is claiming a refund of double the security deposit in the amount of \$2,500.00.

The tenant is also claiming damages for loss of property and income due to a serious water leak that soaked personal possessions in the unit. The tenant testified that the landlord commenced extensive renovation work beginning on February 15, 2014 that rendered the lower bathroom and the lower 2 bedrooms unusable for the rest of the month of February until the tenancy ended. The claim for compensation for losses is \$525.00.

The landlord acknowledged that they did do some renovation work in the unit, but stated that this was done at the tenant's request being that the tenant had reported a plumbing leak and requested repairs.

Analysis

Claim for Damages and Loss

In 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.

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

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, and
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 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. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. Finally it must be proven that the claimant took reasonable steps to address the situation and to mitigate the damage or losses that were incurred.

Based on the evidence and testimony, I find that there was a plumbing leak and that the landlord had to deal with the repairs. While I do not find that the tenant has satisfied the test for damages with respect to the claimed losses for the damaged items, I do accept that the tenant was deprived of the use of approximately 1/3 of the rental unit for the final 2 weeks of the tenancy while the plumbing repairs were being carried out.

Accordingly, I find that the tenant is entitled to be compensated in the amount of \$433.33, representing half a month rent paid, \$1,300.00 divided by one third.

Claim for Return of Security Deposit

Although the landlord claims that no security deposit was paid, I find that this fact could have been verified had the landlord followed the Act by creating a tenancy agreement as required under the Act. I find that it is not within the tenant's power to create the tenancy agreement and only the landlord has this responsibility.

Without a written agreement that properly documents the tenancy terms, including the amount of security deposit paid, I find I must rely solely upon the verbal testimony provided during these proceedings.

I find that the tenant had documented the fact they sent a forwarding address to the landlord in writing and was able to provide the tracking number. This fact supports the tenant's claim that the landlord was holding a security deposit on their behalf.

Given the above, I find, on a balance of probabilities that it is more likely than not a security deposit was collected by the landlord.

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.

The Act states that the landlord can only 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 through Dispute Resolution to retain the amount.

I find that the tenant did not give the landlord written permission to keep the deposit, nor did the landlord make application seeking 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 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, pet damage deposit, or both, as applicable.

I find that the tenant's security deposit was \$1,250.00 and the landlord did not comply with the Act by keeping the security deposit without an order to do so. Accordingly I find that the tenant is entitled to be paid double the security deposit for compensation in the amount of \$2,500.00.

Based on the testimony and evidence presented during these proceedings, I find that the tenant is entitled to total compensation of \$2,983.33, comprised of \$433.33 for loss of use of a portion of the rental unit undergoing repairs, \$2,500.00 for double the security deposit and rent abatement for six months without internet, \$400.00, representing double the security deposit and the \$50.00 cost of the application.

I hereby grant the tenant an monetary order for \$2,983.33. This order must be served on the Respondent and may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court if not paid.

In regard to the landlord's testimony and evidence alleging that the tenant should compensate the landlord for damages, I find that I am not able to hear, nor determine, any claims made by the landlord as this hearing was convened on the tenant's

application and no cross application from the landlord is before me. The landlord is at liberty to pursue claims for compensation by making their own application for dispute resolution.

Conclusion

The tenant is successful in the application and is granted a monetary order for a refund of double the security deposit and for a retro-active rent abatement.

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: July 09, 2014

Residential Tenancy Branch

