



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

Decision

Dispute Codes: MNDC, FF

Introduction

This Dispute Resolution hearing was convened to deal with an Application by the tenant for \$25,000.00 in monetary damages from the landlord under the Act. The hearing was also convened to deal with a cross application by the landlord seeking a monetary order for damage or loss under the Act for \$25,000.00.

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 compensation for damages under the Act?

Issues to be Decided for the Landlord's Application

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

Background and Evidence

The tenancy began February 28, 2014 with rent set at \$380.00 per month.. A security deposit of \$190.000 was paid. The tenant vacated at the end March 2014. 2013.

The tenant testified that they endured abuse at the hands of the landlord and had property stolen including two cell phones. The tenant claims that during and after the one-month tenancy the tenant was unable to work and suffered medical issues. The tenant did not provide a monetary worksheet with a detailed breakdown of the financial claim, but has asked for an award of \$25,000.00.

The landlord testified that, due to the tenant's conduct and accusations against the landlord, he was unable to sleep or work and is claiming \$25,000.00. The landlord did not provide a monetary worksheet with a detailed breakdown of costs and losses.

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

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, I find that each party is alleging that the other violated the Act and agreement and that they suffered substantial monetary losses.

I find that the tenant has made serious allegations against the landlord with respect to conduct and loss of property consisting of 2 phones which the tenant believes the landlord had stolen. However, aside from the allegations made by the tenant, there was not sufficient proof that the landlord was in violation of the Act and the claim fails element 2 of the test for damages.

I find that the landlord has claimed that he suffered emotional and medical effects stemming from the tenant's conduct and accusations. However, the landlord has not proven that the tenant violated the Act or agreement sufficiently to satisfy element 2 of the test for damages, nor has the landlord explained how the monetary losses being claimed were calculated to satisfy element 3 of the test for damages..

Section 59(2) of the Act states that an application for dispute resolution must be in the applicable approved form and include full particulars of the dispute that is to be the subject of the dispute resolution proceedings.

Section 59(5) states that the application for dispute resolution may be declined if, in the dispute resolution officer's opinion the application does not disclose a dispute that may be determined or the application does not comply with section 59(2).

Section 62(4)(b) of the Act states that a dispute resolution officer may dismiss all or part of an application for dispute resolution if the application does not disclose a dispute that may be determined under this Part.

Given the above, I find that both the landlord's application and the tenant's application must be dismissed pursuant to section 59 and 62 of the Act. The parties have not provided sufficient information to establish a basis for their monetary claims.

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

Based on the testimony and evidence I hereby dismiss the landlord's application without leave to reapply.

Each party is responsible for their own costs of the applications. I hereby order that the tenant's security deposit being held by the landlord be administered in accordance with section 38 of the Act.

Conclusion

The landlord and the tenant were not successful in their cross applications seeking monetary compensation and both applications are 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: July 28, 2014

Residential Tenancy Branch