



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MNSD, O SS, CNR, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant, to cancel a notice to end tenancy, for a monetary order for money owed or compensation for loss under the Act, for return of double the security deposit, to have the landlord comply with the Act, to serve documents or evidence in a different way than required by the Act, and to recover the filing fee from the landlord.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing.

The parties confirmed receipt of all evidence submissions and there were no disputes in relation to review of the evidence submissions

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts and issues in this decision.

Preliminary matter

In the case before me, the tenancy ended on June 24, 2014, when the tenant completed the move-out condition inspection report and returned the key to the landlord. Therefore, any notice to end tenancy issued after the tenancy ended is not valid and the tenant was not attempting to reinstate the tenancy. Therefore, I find it not necessary to consider the issue, to cancel a notice to end the tenancy.

Further, there is no requirement for me to hear the issue to serve documents in a different manner as there was no issue arising from the evidence submitted.

Issues to be Decided

Is the tenant entitled to money owed or compensation under the Act?
Is the tenant entitled to the return of double the security deposit?

Background and Evidence

The tenancy began on October 15, 2013. Rent in the amount of \$900.00 was payable on the first of each month. A security deposit of \$450.00 was paid by the tenant. The tenancy ended on June 24, 2014.

The parties agreed a move-in and move-out condition inspection report was completed.

The tenant claims as follows:

a.	Double the security deposit – less agreed upon repair	\$ 880.00
b.	Return of June rent	\$ 900.00
c.	Filing fee	\$ 50.00
	Total claimed	\$ 1,830.00

Double the security deposit

The parties agreed at the move-out condition inspection the landlord was provided with the tenants forwarding address. The parties further agreed that the landlord was authorized by the tenant to retain the amount of \$20.00, for a repair.

The landlord testified that he did not return the tenant's security deposit and has not filed an application for dispute resolution claiming against the deposit. The landlord stated he withheld the deposit as he feels the tenant owes loss of rent for not providing sufficient notice to end the tenancy.

Return of June rent

The tenant testified that she seeks to recover the rent for June 2014, for loss of quiet enjoyment. The tenant stated when she gave her notice to end the tenancy the landlord scheduled a viewing without giving them sufficient notice. The tenant stated she consent to the viewing; however, she informed that landlord that she expected proper 24 hours notices for any further viewing. The tenant confirmed there were no other viewings.

The tenant testified that she also felt the landlord emails regarding how he expected the rental unit to be cleaned at the end of the tenancy to be stern and harassing by the tone. Filed in evidence is a copy of the emails.

The tenant testified that the landlord also verbally abuse her partner, by calling him "a dummy" when he was asking him for a small container of paint to cover spots on the walls that they found when they were moving their furniture out of the rental unit. The tenant stated she was not present during this conversation. Filed in evidence is a letter from AM.

The landlord testified that after the first viewing, which he gave short notice with the consent of the tenant no further viewing were done and had he conducted further viewings of the rental unit, he would have given 24 hour's notice as request by the tenant.

The landlord testified that the rental unit was provided to the tenant clean and he was only telling the tenant in the emails of his expectation on how he expected the tenant to leave the rental unit at the end of the tenancy. The landlord stated there is nothing in the emails that are inappropriate.

The landlord denied calling the tenant's partner any names.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

In a claim for damage or loss under the Act or tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities.

To prove a loss and have one party pay for the loss requires the claiming party to prove four different elements:

- Proof that the damage or loss exists;
- Proof that the damage or loss occurred due to the actions or neglect of the Respondent in violation of the Act or agreement;
- Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
- Proof that the Applicant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

Where the claiming party has not met each of the four elements, the burden of proof has not been met and the claim fails. In this case, the tenant has the burden of proof to prove their claim.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

Section 7(1) of the Act states that if a landlord or tenant does not comply with the Act, regulation or tenancy agreement, the non-comply landlord or tenant must compensate the other for damage or loss that results.

Section 67 of the Act provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

Double the security deposit

In this case, the tenant agreed, in writing, that the landlord could retain the amount of \$20.00 from the security deposit.

There was also no evidence to show that the landlord had applied for arbitration, within 15 days of the end of the tenancy or receipt of the forwarding address of the tenant, to retain the balance of the security deposit.

The landlord has breached section 38 of the Act. The landlord is in the business of renting and therefore, has a duty to abide by the laws pertaining to residential tenancies.

The security deposit is held in trust for the tenant by the landlord. At no time does the landlord have the ability to simply keep the security deposit because they feel they are entitled to it or are justified to keep it.

The landlord may only keep all or a portion of the security deposit through the authority of the Act, such as an order from an Arbitrator. Here the landlord did not have any authority under the Act to keep any portion of the security deposit. Therefore, I find that the landlord is not entitled to retain any portion of the security deposit.

Section 38(6) provides that if a landlord does not comply with section 38(1), the landlord must pay the tenant double the amount of the security deposit. The legislation does not provide any flexibility on this issue.

Having made the above findings, I must order, pursuant to section 38 and 67 of the Act, that the landlord pays the tenant the sum of **\$880.00**, comprised of double security deposit on the original amount held (\$450.00 less the agreed upon deduction in amount of \$20.00).

Return of June rent

The tenant is seeking return of June 2014, for loss of quiet enjoyment, due to emails regarding cleaning that were received between May 25 2014 and June 1, 2014.

I have reviewed the email threads and there is no evidence in the emails that suggest harassing or threatening behavior by the landlord. The emails are simply a mutual ongoing conversation between the tenant and landlord. I find the tenant has failed to prove a violation of the Act, by the landlord.

Further although the landlord gave the tenant short notice for a viewing on one occasions the tenant consented to the viewing. The landlord did not have any further viewings during the balance of the tenancy. I find the tenant has failed to prove a violation of the Act, by the landlord.

In this case, the tenant's partner writes that he was called "a dummy" by the landlord. That was denied by the landlord. As a result, I find the tenant has failed to provide sufficient evidence of any verbal abuse by the landlord.

In light of the above, I dismiss the tenant's claim for return of June 2014, rent.

I find that the tenant has established a total monetary claim of **\$930.00** comprised of the above described amount and the \$50.00 fee paid for this application.

This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

Conclusion

The tenant is granted a monetary order in the above amount.

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: December 05, 2014

Residential Tenancy Branch

