



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MNSD, OLC, OPT

Introduction

This hearing dealt with the tenant's Application for Dispute Resolution seeking an order of possession and a monetary order.

The hearing was conducted via teleconference and was attended by the tenant and both landlords.

The tenant testified the landlords failed to serve their evidence to him in accordance with the requirements of Residential Tenancy Branch Rule of Procedure 3.15. Rule 3.15 requires that a respondent provide their evidence to the applicant and the Residential Tenancy Branch no later than 7 days prior to the hearing.

The tenant submits the landlord served their evidence package by serving them to his parents on January 26, 2015 and that he did not receive them from his parents until 2 days later. The tenant acknowledged that at the time of service he was living with his parents.

Section 88 of the *Residential Tenancy Act (Act)* allows for the service of documents such as a respondent's evidence to be served by leaving them with an adult who apparently resides with the person. As such, I find the landlords served their evidence in a manner allowed under the *Act*.

As to the lateness of the service, I note that, despite not receiving the documents from his parents until two days after they were received by them, the landlords did serve the documents in a manner that allowed only 5 days before the hearing. However, the tenant was well prepared to address all relevant matters in his claim and to all of the landlord's evidence and testimony.

Upon review of the landlords' evidence I note that the majority of documentation included the landlord's written statements of which all relevant issues were also addressed by the landlords in their verbal testimony. I also find the remainder of evidence submitted that included printouts of text messages; a handwritten note from the tenant; and other photographs of documents were not relevant for consideration in the matters before me.

As such, I find there was no need to rely upon the documentary evidence of the landlords and I have not considered it in this decision.

At the outset of the hearing the landlords raised the question of jurisdiction. The landlords submit that the rental unit is a bedroom in their family home and that while the kitchen and bathroom in the basement were used primarily by the tenant the landlord's family also uses both.

The tenant has submitted into evidence a copy of a "Rental Agreement" that states in clause #2: "The rental space will include 1 private bedroom, as well as a kitchen, laundry facilities and washroom to be shared by the tenants. The rental space will also consist of a 'shared family room' – a common space to be used by all occupants of the house with a tv, seating, table area, etc." [reproduced as written]. Clause #11 also states: "The rental space (bedrooms, kitchen and washroom) will be cleaned immediately prior to the tenant's move in date." [reproduced as written].

The landlords confirmed that that the Rental Agreement submitted by the tenant was in fact the agreement they relied upon. The landlord submits that the agreement stipulates only that the bedroom was private but that the intent was for all occupants to be able to use the kitchen and bathroom.

Section 4 of the *Residential Tenancy Act (Act)* states that the *Act* does not apply to: living accommodation in which the tenant shares bathroom or kitchen facilities with the owner of that accommodation.

In the case of verbal agreements, I find that where terms are clear and both the landlord and tenant agree on the interpretation, there is no reason why such terms cannot be enforced. However when the parties disagree with what was agreed-upon, the verbal terms, by their nature, are virtually impossible for a third party to interpret when trying to resolve disputes.

In the case before me, I have the benefit of a written agreement and based on the wording of that agreement I find that the kitchen and bathroom are to be shared by tenants only, when there is more than one tenant. I find that the language specifically precludes the landlords from use of the bathroom and kitchen but does allow for the landlords and their family to use the "shared family room"

Based on these findings I find that the tenancy is not exempted from the *Act* pursuant to Section 4, and I accept jurisdiction on the matters raised in this Application.

At the start of the hearing, the tenant expressed that he no longer sought an order of possession and as such, I have amended his Application to exclude the matter of possession.

In relation to the tenant's monetary claim, the tenant stated on his Application that he was seeking a monetary order for compensation and for return of his security deposit in the amount of \$1,550.00. However, with the exception of submitting evidence to show that the security deposit was \$325.00 the tenant did not provide any explanation of either what the balance of \$1,225.00 was for or how he determined this amount of his claim.

Section 59(2)(b) of the *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. As the tenant has failed to provide any specific details as to why he is claiming \$1,225.00 I find the tenant has failed to provide any of the particulars required under Section 59(2)(b). As such, I dismiss this portion of the tenant's claim with leave to reapply.

Issue(s) to be Decided

The issues to be decided are whether the tenant is entitled to an order of possession for to a monetary order for return of the security deposit, pursuant to Sections 38, 67, and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The tenant submitted a tenancy agreement for a tenancy beginning on December 1, 2014 for a monthly rent of \$650.00 due on the last day of each month with a security deposit of \$325.00 paid. The tenancy ended on January 10, 2015

The tenant submits that he provided his forwarding address to the landlords when he provided them with a copy of his Application for Dispute Resolution. The tenant submits that the landlords had returned \$125.00 of his security deposit back to him and withheld \$200.00 because the landlords stated that the tenant had erased some movies from the family PVR. The tenant states he and three witnesses heard the female landlord explaining this to police officers who were in attendance on the final day of the tenancy.

The landlords submit that on January 10, 2015 they returned to the tenant \$775.00 representing the full security deposit of \$325.00 plus \$650.00 rent less \$200.00 for the tenant's 10 days in the rental unit at \$20.00 per day.

The female landlord stipulated that she would not have said the things the tenant stated he was quoting her on. The male landlord confirmed that while they did discuss the fact that the tenant had erased some movies with the police in addition they discussed that they wanted to retain \$20.00 per day for the 10 days from the rent and that they would return the balance to the tenant.

Analysis

To be successful in a claim for compensation for damage or loss the applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
3. The value of the damage or loss; **and**
4. Steps taken, if any, to mitigate the damage or loss.

In the case before me, the burden is on the tenant to provide sufficient evidence that the landlord has withheld any portion of the security deposit. When two parties provide testimony regarding events that is different but equally plausible the party with the burden of proof must provide additional evidence to corroborate their claim.

As I find both explanations as to the return of funds to the tenant to be plausible, it is incumbent on the tenant to provide additional evidence in support of his claim. He states that he had three witnesses, however he did not provide any written statements or affidavits or present any of these witnesses to provide testimony.

As such, I find the tenant has failed to provide sufficient evidence to establish that the landlords have withheld any amount from the security deposit.

Conclusion

Based on the above, I dismiss the tenant's Application for Dispute Resolution in its entirety.

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: January 30, 2015

Residential Tenancy Branch

