



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards
Ministry of Housing and Social Development

DECISION AND REASONS

Dispute Codes:

MNDC, MNSD, FF

Introduction

This hearing was convened in response to an application by the tenant for a Monetary Order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement (return of rent paid of \$200 and cost of a sofa with purported value of \$400), the return of security deposit paid (\$380) and recovery of the filing fee associated with this application (\$50).

I accept that despite having been served with the application for dispute resolution and notice of hearing by registered mail in accordance with Section 89 of the Residential Tenancy Act (the Act) the landlord did not participate in the conference call hearing.

Issue(s) to be Decided

Is the landlord entitled to the monetary amounts claimed?

Background and Evidence

The tenancy began on April 23, 2007. The tenant and landlord entered into a one year lease with a move-in dated of April 23, 2007. Rent in the amount of \$750 was payable in advance on the first day of each month. At the outset of the tenancy, the landlord collected a security deposit from the tenant in the amount of \$380.

The undisputed testimony of the tenant is as follows. The tenant paid \$200 for occupancy of the suite from April 23 to April 30, 2007 before then owing a full month's rent for May 2007. In the very first week of occupancy, the tenant moved in some belongings then determined he no longer wanted to rent the suite due to an issue unacceptable to the tenant, and informed the landlord of same. As a result the landlord locked out the tenant and his belongings. A protracted dispute ensued with the result

that the landlord delivered the tenant's belongings to the RCMP Police station for the tenant to collect. The tenant determined to regain possession of all his belongings, except the sofa which now had a 2-3 inch greasy stain and several smaller marks on one of the arms of the sofa. Other than that, the tenant claims the light-coloured sofa was, "brand new". The tenant testified he determined not to accept the sofa and left it at the Police station.

Twenty two (22) months later the tenant is filing for return of rent, security deposit and for replacement of the sofa soiled by the landlord. The tenant's testimony is that the length of time to bring on this action was the result of the tenant, at first giving up on the entire matter, then he moved to Asia for a year, then on return determined to pursue the matter.

Analysis

The tenant ended what appears to be a one year fixed term tenancy without giving the landlord an opportunity to resolve any problem the tenant identified for wanting to end the tenancy. The tenancy agreement provided by the tenant states that if any party violates the agreement, he who terminates the agreement shall pay the other party half the monthly rent as compensation. Regardless, in so far as the tenant's application for return of the security deposit is concerned, under Section 39 of the Residential Tenancy Act (the Act) it states:

Landlord may retain deposits if forwarding address not provided

39 Despite any other provision of this Act, if a tenant does not give a landlord a forwarding address in writing **within one year after the end of the tenancy,**

(a) **the landlord may keep the security deposit or the pet damage deposit, or both, and**

(b) **the right of the tenant to the return of the security deposit or pet damage deposit is extinguished.**

At no time has the tenant given the landlord written notification requesting the return of the security deposit – and certainly at no time was this done in the first year after the tenancy ended. The tenant is no longer entitled to the return of the security deposit. I must dismiss this portion of the tenant's claim without leave to reapply.

The tenant's testimony is that his sofa (for which he is claiming \$400) was brand new at the outset of the tenancy, and the tenant made a choice to decline accepting it back once the landlord caused some soiling of the sofa. The tenant testified he took back all other belongings the landlord returned to him, but determined to leave the sofa behind, rather than have the sofa cleaned of any soiling caused by the landlord.

It must be emphasized that in order to claim for damage or loss under the *Act*, the party claiming the damage or loss (in this case the tenant) bears the burden of proof.

Moreover, 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 other party 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.

The tenant bears the burden of establishing each claim on the balance of probabilities. The claimant must 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 other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. Finally the claimant must show that reasonable steps were taken to address the situation and to mitigate the damage or losses that were incurred.

The tenant's claim of \$400 for a sofa does not meet the test for damage and loss claims. Therefore, I must dismiss this portion of the tenant's claim without leave to reapply.

Lastly, in the absence of any other evidence or testimony disputing this claim **I find** the tenant is entitled to the return of the \$200 paid in rent for the first week of the failed tenancy.

As the tenant is partially success in their application, the tenant is entitled to partial return of the filing fee in the amount of \$25, for a total entitlement of **\$225**.

Conclusion

I am granting the tenant an order under section 67 for **\$225**. If necessary, this order may be filed in the Small Claims Court and enforced as an order of that Court.

Dated June 22, 2009.