



Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing and Social Development

Hearing Decision

Dispute Codes:

MNSD, MNDC

Introduction

This Dispute Resolution hearing was convened to deal with an application by the tenant for an order for the return of the security deposit retained by the landlord and damages for loss of quiet enjoyment during the tenancy. The tenant and the landlord participated in the hearing and gave testimony.

Issue(s) to be Decided

The tenant was seeking to receive a monetary order for the return of the security deposit that the tenant considers as having been wrongfully retained by the landlord.

The issues to be determined based on the testimony and the evidence are:

- Whether the tenant is entitled to the return of the security deposit pursuant to section 38 of the Act. This determination is dependant upon the following:
 - Did the tenant pay a security deposit?
 - Did the tenant furnish a forwarding address in writing to the landlord?
 - Did the tenant provide written consent to the landlord permitting the landlord to retain the security deposit or any portion of the deposit at the end of the tenancy?
 - Did the landlord make application to retain the security deposit for damages or loss within 15 days of the end of the tenancy or the receipt of the forwarding address?

- Whether the tenant is entitled to monetary compensation for loss of quiet enjoyment and other violations of the Act by the landlord that occurred during the tenancy.

The burden of proof is on the applicant to establish that a deposit was paid and not returned and that compensation for damages and loss is warranted under the Act.

Background and Evidence

The tenancy began on in September, 2008 with rent set at \$1,450.00 per month and a security deposit of \$700.00 was paid. A copy of the tenancy Agreement was in evidence. The tenancy ended on September 1, 2009. The tenant submitted into evidence a written statement regarding the claim, copies of photos and copies of communications with the landlord.

The tenant testified that the landlord was instructed in writing to return the deposit to the address of the unit where it would be forwarded to the tenant's current address by Canada Post.

The tenant testified that the landlord had intruded on the tenant's quiet enjoyment during the tenancy by making noise and appearing on site at will. The tenant testified that verbal complaints were made but the tenant did not make an application for dispute resolution and instead chose to end the tenancy. The tenant was seeking to be compensated for the landlord's violations of the Act.

The landlord testified that the remainder of security deposit was already returned to the address provided by the tenant after the tenant served the hearing package and had submitted copies of the cheque for \$215.00 and the second portion of \$485.00.

The landlord testified that the tenant did not deserve compensation for the damages claimed as the landlord had every right to be on the premises because his girlfriend resided in another suite on the same property. The landlord testified that the tenant left significant damages to the unit and supplied photos and other evidence

Analysis : Claim for Return of Security Deposit

In regards to the return of the security deposit and pet damage deposit, I find that section 38 of the Act is clear on this issue. The Act states that the landlord can retain a security deposit if the tenant gives written permission at the end of the tenancy. If the permission is not in written form and signed by the tenant, then the landlord's right to merely keep the deposit does not exist and once the forwarding address has been provided, within 15 days the landlord must either return the deposit or make application to keep the deposit .

Based on the evidence and the testimony, I find that the tenant did not give the landlord written permission 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, and must pay the tenant double the amount of the security deposit.

I find that, while the tenant did provide written notice asking the landlord to return the deposit, the tenant failed to supply a valid forwarding address where the tenant was residing. Therefore, I find that the landlord did not receive the forwarding address of the tenant in writing until the landlord was actually served with the hearing package for today's proceedings. I find that the landlord did comply with the Act by returning the deposit in full within 15 days and therefore is not required to pay double the deposit.

Given the above, the portion of the tenant's application claiming return of the deposit must be dismissed.

Analysis : Compensation for Loss of Quiet Enjoyment and Other Violations

In regards 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 the Act, the regulations or the 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.

I find that in order to justify payment of damages under section 67, the Applicant would be required to prove that the other party did not comply with the Act and that this non-compliance resulted in costs or losses to the Applicant, pursuant to section 7.

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 situation, the burden of proof is on the claimant, that being 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 respondent. 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 made a reasonable attempt to address the situation and to mitigate the damage or losses that were incurred

Whether or not the conduct of the landlord was found to be in violation of the Act during the tenancy, which would satisfy elements 1 and 2 of the test for damages, I find that element 4 of the test for damages has not been met. The reason for this determination is that the tenant did not pursue any remedies to the alleged problems during the tenancy. No evidence of written complaints to the landlord was submitted and the tenant did not make an application for dispute resolution during the tenancy, choosing instead to terminate the tenancy.

Accordingly, I find that this portion of the tenant's application seeking damages for loss of quiet enjoyment and other transgressions by the landlord, must be dismissed.

In regards to the landlord's own claim for damages, for which evidence was submitted, I was not able to hear nor consider the landlord's claim against the tenant during these proceedings. This hearing was convened to deal with the *tenant's* application under section 38 and 67 of the Act and the landlord did not make a cross application. That being said, the landlord is at liberty to make a separate application to claim damages if the landlord feels that compensation is warranted pursuant to section 67 of the Act.

Conclusion

Based on the testimony and evidence presented during these proceedings, I find that the tenant is not entitled to further compensation and I hereby dismiss the tenant's application in its entirety without leave.

January 2010

Date of Decision

Dispute Resolution Officer