Dispute Resolution Services

Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes:
MNSD, MNDC, FF

Introduction

This hearing was convened in response to an application by the tenant (applicant) pursuant to the *Residential Tenancy Act* for Orders as follows:

1. A Monetary Order in compensation for damage or loss under the Act, regulation or tenancy agreement – Section 67
2. An Order for the return of the security - Section 38
3. An Order to recover the filing fee for this application - Section 72.

I accept the applicant's evidence that despite the landlord 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.

The applicant was given full opportunity to be heard, to present relevant sworn evidence and to make relevant submissions.

The applicant's claim on application is as follows:

Compensation for loss – breach of quiet enjoyment.	$6041.67
Moving costs – carpet cleaning, alarm contract, piano moving	$718.98
Double security deposit + interest - $1000	$1813.25
Return of illegal rent increase	$1300
Filing fee for this application	$100.00
Total of applicant's claim	**$9973.90**

Issue(s) to be Decided

Is the applicant entitled to the monetary amounts claimed?

Background and Evidence

The applicant provided an abundance of document evidence to this hearing, including the original tenancy agreement, a quantum of photographs, correspondence and invoices.

The following testimonial and document evidence is undisputed.

The tenancy began on May 18, 2008 and ended September 30, 2010 upon the applicant giving the landlord a Notice to End in accordance with the Act. The residential property is a two level half, of a side by side duplex. Rent for both levels of the duplex in the amount of $2900 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 applicant in the amount of $1400. At the end of the tenancy the landlord did not do a move out inspection by recording it and providing a copy to the applicant. The applicant acknowledges that on September 30, 2010 the landlord did a 'cursory walk through' with them, but as a result there was no documentation or agreement by the parties as to how the security deposit would be administered. The applicant testified that they provided the landlord with their written forwarding address at that time, and that the landlord subsequently sent them $1000 of their security deposit on November 07, 2010 and it was not accompanied by other documentation. *The applicant claims double the security deposit as per Section 38 of the Act.*

The applicant testified that on April 01, 2010 they sublet the basement level of the duplex – entering into a written tenancy agreement with the downstairs tenant – collecting $850 per month. I do not have benefit of the written tenancy agreement between the applicant and the downstairs tenant. The applicant continued to occupy the upstairs.

On April 06, 2010 the applicant notified the respondent landlord via e-mail that they had noted some rodent droppings in the basement suite area – furnace area, and at the top of basement stairs. The landlord acknowledged the issue and dispatched their general help person whom attended the residential property and blocked a suspected entry point in the foundation with 'chicken wire'. The applicant did some research and suggested to the landlord that exterminators should be used. The landlord conveyed that the existence of rodents was,"normal" for the neighbourhood and that exterminators would set traps and that the applicant should therefore purchase some traps. The

applicant claims she purchased traps and a few rodents (“3 or 4”) were caught in the following six months. Over the same period the applicant communicated with the landlord about hiring exterminators but the landlord refused. The basement tenant reported to the applicant finding some blood leading from a trap, but no rodent. Soon after, an odour which the basement tenant and applicant came to know to be of a decomposing rodent was discernable in the basement and less so upstairs. The applicant made repeated attempts to have exterminators deal with the rodent issue. Since bringing the rodent matter to the attention of the landlord the applicant testified that they experienced the rodent problem in their upstairs accommodations by occasionally noticing some rodent droppings. In early August 2010 the applicant contacted the Residential Tenancy Branch and was apprised of the dispute resolution process available to tenants and landlords.

The applicant provided a statement from their downstairs sublet tenant of their experience with the rodents in their suite and their efforts to trap the rodents, sealing off their access points, cleaning their droppings, and their communications with the owners of the property (respondents) about a remedy. The basement tenant provided that the owner told them how to manage the problem but did not offer to compensate the tenant for any materials required. In the last month of their tenancy they became sufficiently concerned of their living environment that they moved upstairs with the applicant of this matter and then vacated on August 12, 2010. *The applicant claims compensation in the form of return of one third of rent payable for the period April 06 – August 12, 2010 ($3866.67) and one half of rent payable for the period August 12, 2010 to September 30, 2010 ($2175).*

The applicant provided evidence that the landlord gave the tenant a hand-written note on their letterhead dated April 30, 2009, notifying them that the rent was being increased by $100 effective August 01, 1909 (2009). The applicant testified that she paid the rent increase as requested for the following 13 months - prior to another similar notice taking effect - raising the rent another $10 per month. *The applicant seeks the return of the additional $100 paid over the period of 13 months, in the sum of $1300.*

The applicant gave their notice to end on August 22, 2010 and vacated September 30, 2010. In the process, the applicant claims the landlord made her clean the carpeting in the rental unit, at a purported cost of $140 as a condition of vacating with hopes of a full return of the security deposit – which the applicant purports the landlord ended up taking the carpeting out. *The applicant is claiming costs associated with their moving from the rental unit.*

Analysis

I have considered all evidence and all submissions to this claim and have considered all testimony given in the hearing.

On the preponderance of all the evidence advanced, and on the balance of probabilities, I am satisfied the landlord provided the applicant with an illegal increase in the rent payable effective August 01, 2009, which was not in compliance with the provisions for a legal rent increase in the Act. I find that the applicant is therefore entitled to the return of the illegal amount paid in the aggregate of **$1300**, and I will so Order.

I find the tenant provided the landlord with (their) written forwarding address on September 30, 2010. The landlord returned $1000 of the security deposit in November 2010. The landlord has not applied for dispute resolution to retain any of the security depoist.

Section 38 of the Residential Tenancy Act provides as follows:

Section 38(1)

38(1) Except as provided in subsection (3) or (4) (a), within 15 days after the later of

38(1)(a) the date the tenancy ends, and

38(1)(b) the date the landlord receives the tenant's forwarding address in writing,

the landlord must do one of the following:

38(1)(c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;

38(1)(d) file an application for dispute resolution to make a claim against the security deposit or pet damage deposit.

Further: 38(6) If a landlord does not comply with subsection (1), the landlord

38(6)(a) may not make a claim against the security deposit or any pet damage deposit, and

38(6)(b) **must pay the tenant double the amount of the security deposit,** pet damage deposit, or both, as applicable.

The Act requires that 15 days after the later of the end of tenancy and the tenant providing the landlord with a written forwarding address, the landlord must repay the security deposit or make an application for dispute resolution. If the landlord fails to do so, then a tenant is entitled to recovery of double the base amount of the security deposit.

I find that the tenancy ended on September 30, 2010, and that the applicant provided (their) forwarding address in writing on that date. **I further find** that the landlord failed to repay the security deposit or make an application for dispute resolution within 15 days of receiving the applicant's forwarding address in writing. **I find** that the applicant has established a claim for the security deposit of $1400, accrued interest of $13.25, and double the original amount of the security deposit in the amount of $1400 - for a total of $2813.25. The landlord has returned $1000 - entitling the tenant to an award of the difference of **$1813.25**, and I will so Order**.**

I find that the applicant apprised themselves of the process to file for dispute resolution to resolve their issues with the landlord in early August 2010, but instead chose to give their notice to end the tenancy as provided by the Act on August 22, 2010. The applicant chose to end the tenancy and was not illegally forced to vacate. In such a case, the tenant is not entitled to moving costs. In association with this claim, I do not have benefit of proof the tenant paid for carpet cleaning. As a result of the above, **I dismiss** this portion of the applicant's claim for costs associated with their move, without leave to reapply.

I find that in order to justify payment of damages or loss under sections 67 of the *Act* (in this matter, loss of quiet enjoyment), the applicant tenant is 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, in this case the applicant tenant, bears the burden of proof and the evidence furnished by the applicant must satisfy each component of the following test:

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 amount required to compensate for the loss

4. Proof that the claimant followed section 7(2) of the *Act* by doing whatever was reasonable to minimize the damage or loss.

In regards to a tenants right to claim damages of loss from the landlord, Section 7 of the *Act* states that if the landlord or tenant does not comply with this *Act*, the non-complying landlord or tenant must compensate the other for damage or loss that results, and Section 67 of the *Act* grants a Dispute Resolution Officer the authority to determine the amount under these circumstances.

The applicant claims for loss of quiet enjoyment due to a persistent rodent presence in the residential property basement suite, and less so in the upstairs portion occupied by the applicant. I find that the applicant in this matter (the original tenant of the residential property) *became the landlord* of the basement suite upon entering a tenancy agreement, in which the majority of the rodent presence then apparently contributed to the loss of quiet enjoyment of the downstairs tenant. The applicant in this matter claims they suffered a loss of quiet enjoyment in their experience of occasional rodent dropping found in their upstairs dwelling. This hearing did not have benefit of evidence that the downstairs tenant has pursued a monetary claim of compensation from the applicant in this matter as their landlord, which the applicant is now wanting by this application to be set off by for their landlord and owner. The downstairs tenant may well have a claim against the applicant in this matter for loss of quiet enjoyment; however, in the absence of evidence of such a claim against the applicant as their landlord, I find the basis of the applicant's claim for loss of quiet enjoyment is limited to their own circumstances in respect to the rodent infestation. The applicant's evidence in this matter is clearly primarily of the conditions in the basement suite and as to how they impacted on the basement tenant's right to quiet enjoyment. I accept the applicant's testimony that the impact of the rodent infestation on their own tenancy (with the owner landlord) was the periodic discovery of some rodent droppings in their unit.

I accept that the applicant has sufficiently met the test for their loss of quiet enjoyment as per Section 28 of the Act – that from April 06, 2010 to the time they vacated they endured an *unreasonable disturbance*, due to the landlord's neglect of the rodent infestation in the residential property; and, I find that an award of **$600** aptly speaks to the applicant's own loss, and I grant the applicant this amount.

As the applicant was partially successful in their claim I grant the applicant **$50** of their filing fee of $100. The sum of the applicant's award is for **$3763.25.**

Calculation for Monetary Order

Return of illegal rent increase. 13 mo @ $100 per month.	$1300.00
Double security deposit – return of unpaid portion of security deposit	$1813.25
Compensation for loss of quiet enjoyment	$600.00
Filing Fees for the cost of this application	50.00
Total Monetary Award to applicant	**$3763.25**

Conclusion

I grant the applicant an Order under Section 67 of the Act for the amount of **$3763.25**. If necessary, this Order may be filed in the Small Claims Court and enforced as an order of that Court.

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*.