Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

Decision

Dispute Codes:

MNSD, MND, FF

Introduction

This Dispute Resolution hearing was convened to deal with an Application by the tenant for the return of double the security deposit under the Act and a cross application by the landlord seeking a monetary order for damage or loss under the Act for $292.53.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained. The participants had an opportunity to submit documentary evidence prior to this hearing, and the evidence has been reviewed. The parties were also permitted to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the affirmed testimony and relevant evidence that was properly served.

Issues to be Decided for the Tenant's Application

Is the tenant entitled to the return of the security deposit pursuant to section 38 of the Act?

Issues to be Decided for the Landlord's Application

Is the landlord entitled to monetary compensation under section 67 of the *Act*.

Preliminary Matter - Service of Applicant's Evidence

The landlord stated that they had submitted documentary evidence on file to support the landlord's claims, including copies of communications and receipts. However, no copies of the evidence were in the file. The landlord explained that the evidence was faxed into Residential Tenancy Branch yesterday.

The landlord also testified that this evidence was served on the tenant at the time the landlord served their cross application on October 28, 2013.

However, the tenant denied receiving the evidence with the Notice of Hearing and Application package sent by the landlord on October 28, 2013.

The *Residential Tenancy Rules of Procedure*, Rule 3.1, requires that all evidence must be served on the respondent. Rule 3.4 requires that, to the extent possible, the applicant must file copies of all available documents, or other evidence with the Residential Tenancy Branch at the same time as the application is filed, or if that is not possible, at least (5) days before the dispute resolution proceeding.

I note that the *Landlord and Tenant Fact Sheet* contained in the hearing package also makes it clear that "*copies of all evidence from both the applicant and the respondent and/or written notice of evidence must be served on each other and received by RTB as soon as possible*.."

Given the above, I decline to accept or consider any documentary evidence that was not properly served on the other party in accordance with the Act and Rules of Procedure. However, verbal testimony from the landlord was considered.

Background and Evidence

The tenant has the burden of proof to establish the date that the written forwarding address was given to the landlord.

The landlord has the burden of proof to show that compensation for damages and losses is justified.

The tenancy began on September 1, 2012 with rent set at $1,250.00 per month.. A security deposit of $625.00 was paid. The tenant vacated at the end of September 2013.

The tenant testified that he provided the landlord with a written forwarding address at the end of the tenancy. The landlord disputed this testimony and stated that they did not receive a forwarding address in writing until October 15, 2013, when they received an email from the tenant.

The parties both testified that the landlord refunded the tenant's $625.00 security deposit in 3 installments between October 4, 2013 and October 22, 2013.

The tenant's position is that he did not receive the refund of the security deposit in full within 15 days of moving out and provided the written forwarding address. The tenant did not provide a copy of the communication that was given to the landlord with the forwarding address. However, the tenant pointed out that the landlord personally contacted the tenant at his new address and this supports the tenant's claim that the written forwarding address was given to the landlord before October 15, 2013, as

claimed by the landlord. The tenant is claiming compensation of a further $625.00 based on the landlord's alleged failure to refund the deposit before the 15-day statutory deadline.

The landlord's position is that, although they did refund the deposit in three separate installments, the tenant's security deposit was refunded in full within the required 15 days after the forwarding address was given on October 15, 2013. The landlord therefore disputes the tenant's claim for a refund of double the security deposit.

In regard to the landlord's monetary claim for damages, the landlord acknowledged that they failed to complete move-in and move-out condition inspection reports. However, according to the landlord, the tenant had left unrepaired damage to the unit and the landlord is claiming the following:

- $85.98 for paint supplies, to repaint after the tenant had painted the suite without the landlord's permission,
- $116.55 electrician charges to restore wiring tampered with by the tenant,
- $60.00 for 3 holes drilled in the wall and window frame,
- $15.00 to replace a missing shelf in the kitchen removed by the tenant.

No copy of the written tenancy agreement was submitted into evidence. However, it is the landlord's position that, even if there was no specific term in the agreement prohibiting painting, the tenant was still not permitted to go ahead and repaint the unit without landlord approval.

The landlord testified that the tenant's actions in altering the electrical system, particularly without a qualified electrician, would definitely qualify as damage to the suite.

The tenant testified that an issue arose with fact that he painted the suite because the landlord did not like the colour. The tenant testified that the landlord complained about the colour he had chosen and he agreed to do the work in repainting the unit a different colour picked out by the landlord. The tenant pointed out that he should not have to reimburse the landlord for the paint cost as he contributed the labour and it was only done at the landlord's insistence that the unit be painted a different colour than the one he had used.

In regard to the allegation of tampering with the electric service, the tenant pointed out that the enclosed balcony did not have an outlet and there was an extension cord drper through the window. The tenant testified that he merely had a hole drilled so that the cord would go through the wall eliminating a potential hazard. The tenant testified that he offered to repair the holes but the landlord refused. The tenant disagrees with the claim.

In regard to the missing shelves, the tenant stated that he moved some shelves around and did not take them away. The tenant pointed out that he made several improvements and upgrades to the suite at his own cost.

Analysis: Security Deposit

In regard to the return of the security deposit and pet damage deposit, I find that section 38 of the Act is clear on this issue. Within 15 days after the later of the day the tenancy ends, and the date the landlord receives the tenant's forwarding address in writing, the landlord must either repay the security deposit or pet damage deposit to the tenant with interest or make an application for dispute resolution claiming against the security deposit or pet damage deposit.

The Act states that the landlord can only retain a deposit if the tenant agrees in writing the landlord can keep the deposit to satisfy a liability or obligation of the tenant, or if, after the end of the tenancy, the director orders that the landlord may retain the amount. 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 or any pet damage deposit, and must pay the tenant double the amount of the security deposit.

I find that the tenant’s security deposit was $625.00 and all of this amount was finally returned to the tenant on October 22, 2013. Although the tenant gave verbal testimony that he had given the landlord a written forwarding address at the end of the tenancy around September 30, 2013, I find that the tenant did not offer sufficient proof of the date. I accept that the landlord did receive an email letter from the tenant on October 15, 2 013 and therefore was required to refund the security deposit by October 30, 2013.

Given the above, I find that the tenant is not entitled to a refund of double the security deposit and the tenant’s application must be dismissed.

Analysis – Landlord’s Monetary Claim

In regard to an Applicant's right to claim damages from another party, Section 7 of the Act states that, if a landlord or tenant fails to comply with the Act, the regulations or 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 authority to determine the amount and order payment under the circumstances.

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 instance, the burden of proof is on the landlord, 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.

I find that the tenant's role in causing damages is best established through a comparison of the unit 's condition *before* the tenancy began, with the condition of the unit *after* the tenancy ended. In other words, through information contained on the move-in and move-out condition inspection reports signed by both parties.

Section 23(3) of the Act covering move-in inspections and section 35 of the Act for the move-out inspections state that the landlord must offer the tenant at least 2 opportunities, as prescribed, for the inspection. The Act places the obligation on the landlord to complete the condition inspection report in accordance with the regulations and the landlord and tenant must each sign the condition inspection report, after which the landlord must give the tenant a copy of that report in accordance with the regulations. Part 3 of the Regulations goes into significant detail about the specific obligations regarding how and when the Start-of-Tenancy and End-of-Tenancy Condition Inspections and Reports must be conducted.

In this instance, I find that the landlord admitted that neither a move-in condition inspection report nor move-out condition inspection report was completed and . I find the failure to comply with sections 23 and 35 of the Act has hindered the landlord's ability to establish what damages were caused by the tenant and did not pre-exist.

With respect to the landlord's claim for repairs and painting of the rental unit, I find that these claims are disputed by the tenant and that the landlord did not submit sufficient documentary evidence to meet the standard of proof required to meet element 3 of the test for damages.

Given the above, I find that the landlord's application must be dismissed.

Based on the testimony and evidence I hereby dismiss the tenant's application without leave to reapply.

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Each party is responsible for their own costs of the applications.

Conclusion

The landlord and the tenant were not successful in their cross applications seeking monetary compensation and both applications are dismissed without leave.

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 22, 2014

Residential Tenancy Branch