Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNSD, MNDC, MNR, and O

Introduction

This hearing was convened in response to an Application for Dispute Resolution, in which the Tenant applied for the return of the security deposit, for a monetary Order for money owed or compensation for damage or loss; to recover the cost of emergency repairs, and "other".

At the hearing on December 05, 2013 the Agent for the Tenant stated that the Application for Dispute Resolution, the Notice of Hearing, and documents the Tenant wishes to reply upon as evidence were sent to the Landlord, via registered mail, although he cannot recall the date of service. The Landlord stated that the Landlord did receive the Notice of Hearing in the mail but that the Landlord did not receive the Application for Dispute Resolution or any documents the Tenant wishes to reply upon as evidence.

As I was unable to determine whether the Application for Dispute Resolution and the documents the Tenant wishes to reply upon as evidence were actually served to the Landlord, the hearing was adjourned to provide the Tenant with the opportunity to re-serve these documents to the Landlord. The Tenant was also directed to provide the Residential Tenancy Branch with an exact copy of the documents that are mailed to the Landlord.

On December 13, 2013 the Tenant submitted an Application for Dispute Resolution to the Residential Tenancy Branch that is different than the Application for Dispute Resolution that was previously filed with the Residential Tenancy Branch. The Agent for the Tenant stated that the revised Application for Dispute Resolution was served to the Landlord, via registered mail, on December 11, 2013. The Landlord stated that this document was mailed to the male Landlord and that it was provided to her, by the male Landlord, on January 30, 2014.

As the Tenant did not re-serve the original Application for Dispute Resolution and the Landlord stated that it has not been received by the Landlord, I find that the original

Application for Dispute Resolution has never been served to the Landlord. I therefore find that the Tenant cannot rely on the original Application for Dispute Resolution.

I find that only the issues outlined in the revised Application for Dispute Resolution will be considered at these proceedings. In the revised Application for Dispute Resolution the Tenant has only applied for "other" and she has applied for a monetary Order of $275.00. In the details of the dispute of the revised Application for Dispute Resolution it is apparent that the Tenant is seeking compensation because the unit was "unsafe and unhealthy", specifically that the main door did not have a lock and there were ants/insects inside. I therefore find it reasonable that the Landlord would conclude that the claim was for $275.00 for deficiencies with the rental unit and that claim is therefore being considered.

On December 13, 2013 the Tenant submitted a 5 page document titled Rental History, which had been previously submitted to the Residential Tenancy Branch. The Agent for the Tenant stated that this document was served to the Landlord, via registered mail, on December 11, 2013. The Landlord stated that this document was mailed to the male Landlord and that it was provided to her, by the male Landlord, on January 30, 2014. As the Landlord acknowledged receipt of this document, it was accepted as evidence for these proceedings.

Both parties were represented at the hearing. They were provided with the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions.

Preliminary Matter

The Agent for the Tenant stated that the Tenant is seeking compensation for a variety of problems with the tenancy.

The Agent for the Tenant was advised that only issues outlined in the revised Application for Dispute Resolution would be considered at these proceedings. This decision was based on section 59(5)(a) of the *Residential Tenancy Act (Act).* Section 59(2)(b) of the *Act* requires an Applicant to provide sufficient particulars of the claim which, in my view, includes providing a landlord with a clear understanding of why a tenant is seeking compensation.

As the only issues outlined in the revised Application for Dispute Resolution were the broken lock on the sliding glass door and a problem with ants and insects inside the rental unit, the Agent for the Tenant was advised that these were the only issues to be considered at these proceedings. In making this determination I concluded that it would be unfair to the Landlord to consider issues not outlined on the revised Application for Dispute Resolution, as the absence of notice of any other allegations makes it difficult, if not impossible, for the Landlord to adequately prepare a response to the claims.

I note that the Tenant did outline a variety of problems with the tenancy in the document titled Rental History, which are unrelated to the issues with the door and ants/insects. I find that this does not serve to properly notify the Landlord that the Tenant is also seeking compensation for other issues related to the tenancy. The Tenant cannot rely on the evidence itself to explain the specifics of the claim.

In making this determination I was influenced, in part, by the fact that the information provided to the Landlord by the Tenant has been contradictory and confusing. At the hearing on December 05, 2013 the Landlord was informed that the Tenant was seeking compensation in the amount of $2,000.00; in the revised Application for Dispute Resolution the Tenant has declared that she is claiming $275.00 in compensation; and in the document titled Rental History the Tenant is claiming compensation of $15,825.00.

Issue(s) to be Decided

Is the Tenant entitled to compensation for a broken lock and for insects/ants in the rental unit?

Background and Evidence

The Landlord and the Tenant agree that this tenancy began on August 01, 2013; that the Tenant agreed to pay monthly rent of $550.00 by the first day of each month; and that the Tenant paid a security deposit of $275.00.

The Landlord stated that the rental unit was vacated on August 31, 2013 and the Tenant stated that it was vacated on September 01, 2013. The Landlord and the Tenant stated that the Tenant did not provide the Landlord with any notice of the Tenant's intent to vacate the rental unit.

The Landlord stated that on August 30, 2013 a One Month Notice to End Tenancy was personally served to the female Tenant, which declared that the Tenant must vacate the rental unit. At the hearing on February 03, 2014 the Agent for the Tenant stated that a One Month Notice to End Tenancy was never served to the Tenant. In the document titled Rental History the Tenant declared that a One Month Notice to End Tenancy was served to the Tenant on August 30, 2014.

At the hearing on December 05, 2013 the Tenant stated that she will be moving from her current address on January 01, 2014. The Tenant was directed to provide the Landlord with her current address and the address which the Tenant will be moving to on January 01, 2014, for the purposes of providing the Landlord with the opportunity to respond to the Tenant's Application for Dispute Resolution.

At the hearing on February 03, 2014 the Agent for the Tenant stated that they have lived at the address noted as the service address for the Tenant on the revised Application for Dispute Resolution since September 01, 2013. He stated that the new

address provided on the revised Application for Dispute Resolution is the Tenant's current address.

The Landlord stated that the Landlord did not take any action upon receiving the revised Application for Dispute Resolution, as she did not know whether this was the address the Tenant was moving to or whether it was where the Tenant was currently living.

The Agent for the Tenant and the Landlord agree that the Tenant did not provide the Landlord with a forwarding address until evidence was mailed to the Landlord on December 11, 2013.

The Agent for the Tenant stated that the sliding glass patio door in the rental unit did not lock. The Agent for the Tenant stated that the problem was reported to the Landlord on August 01, 2013 but the lock was never repaired.

The Landlord stated that the lock on the handle of the patio door was broken but that the Landlord installed a deadbolt lock on this door on August 01, 2013, which could be used to secure the door.

The Landlord and the Tenant agree that the Tenant reported a problem with ants entering the rental unit. The Landlord stated that in response to this report the Landlord placed an ant trap outside the rental unit. The Tenant stated that in response to this report the Landlord placed mouse poison outside the rental unit that he believed the poison presented a risk to his child, so he disposed of the poison.

The Agent for the Tenant stated that the Landlord left a bed frame, a mattress, and a lawn mower outside of the rental unit, which he believes contributed to the problem with ants. The Landlord stated that the former occupant of the rental unit did leave a bed frame and mattress behind, which has since been removed, and that a lawn mower is stored outside, but this was left in an area of the yard belonging to the Landlord.

Analysis

I found that the testimony provided by the Landlord was forthright and consistent, and I could find no reason to disregard her testimony.

I found the testimony of the Agent for the Landlord to be less reliable. During the hearing on February 03, 2014 the Agent for the Tenant stated that the Tenant was never served with a One Month Notice to End Tenancy and he was given two opportunities to clarify this statement. This is in direct conflict with the written document submitted in evidence by the Tenant. Given that the Landlord stated the Notice was served and the Tenant acknowledged service of the Notice in her written evidence, I find that the Agent for the Tenant's testimony is likely inaccurate.

For the purposes of providing some clarity to this tenancy, I find that, for the purposes of returning the security deposit, the Landlord received a forwarding address for the

Tenant on the date of the hearing on February 03, 2014. **The Landlord must now comply with section 38(1) of the *Act* by February 18, 2014, by either repaying the security deposit and/or pet damage deposit or filing an Application for Dispute Resolution claiming against the deposit(s).**

Given that during the hearing on December 05, 2013 the Tenant informed the Landlord that they were moving to a new address and the Tenant was informed to provide the Landlord with both a current and a new address, I find it reasonable for the Landlord to be confused when they only received one address for the Tenant in the evidence that was mailed to the Landlord on December 11, 2013. I find it reasonable to conclude that the Landlord did not know whether the address was a current address which the Tenant intended to vacate or whether it was a forwarding address for the Tenant. I therefore find it reasonable for the Landlord to delay acting on the forwarding address until that matter could be clarified at the hearing on February 03, 2014.

There is a general legal principle that places the burden of proving that damage or loss occurred on the person who is claiming compensation for damages or loss, which in these circumstances is the Tenant.

I find that the Tenant submitted insufficient evidence to establish that the sliding glass door to the rental unit did not lock properly. In reaching this conclusion I was heavily influenced by the absence of evidence, such as photographs, that corroborates the Agent for the Tenant's testimony that the door did not lock or that refutes the Landlord's testimony that the door did lock. As the Tenant has submitted insufficient evidence to establish that the door did not lock, I dismiss the Tenant's claim for compensation for any problems with the door.

I find that the Tenant submitted insufficient evidence to establish that the Landlord did not respond reasonably to the report of a problem with ants. In reaching this conclusion I was heavily influenced by the absence of evidence, such as photographs, that corroborates the Agent for the Tenant's testimony that the Landlord actually placed mouse poison outside of the rental unit or that refutes the Landlord's testimony that the Landlord placed an ant trap outside the rental unit. As the Tenant acknowledges that he discarded the item that the Landlord placed outside of rental unit, which may have been an ant trap, I find that the Tenant is not entitled to compensation for ants inside the rental unit.

In determining this matter I have placed little weight on the Agent for the Tenant's testimony that property left outside of the rental unit contributed to the problem with ants. In reaching this conclusion I was heavily influenced by the absence of evidence, such as photographs, that suggests that the nature and location of the property stored outside would contribute to an ant infestation.

Conclusion

The Tenant has failed to establish they are entitled to compensation for deficiencies

with the rental unit.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Act*.

Dated: February 05, 2014

Residential Tenancy Branch