Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDC

Introduction

This hearing dealt with an application by the tenant for a monetary order for money owed or compensation for damage or loss suffered under the Act, regulation or tenancy agreement and an order to have double the security deposit returned. Both parties participated in the conference call hearing. Both parties gave affirmed evidence.

Issue to be Decided

Is the tenant entitled to a monetary order as claimed?
Is the tenant entitled to the return of double the security deposit?

Background, Evidence and Analysis

Both parties agree to the following:

The tenancy began on May 1, 2013 and ended on November 30, 2013. The tenants were obligated to pay $700.00 per month in rent in advance and at the outset of the tenancy the tenants paid a $350.00 security deposit. A condition inspection was conducted by the tenant alone at move in and no inspection conducted at move out.

Tenants' First Claim – The tenant is seeking the return of double the security deposit. The tenant stated that he delivered a letter to the landlords' office on October 30, 2013 stating that he was moving out at the end of November 2013 and provided his forwarding address at that time. The tenant stated that he did not receive his security deposit within 15 days of ending the tenancy. The landlords associate stated that she had received the letter but did not read it thoroughly. The landlords associate stated that she overlooked the fact the tenant had provided his forwarding address and that it was an oversight not to return it. The associate stated that when she was provided the Notice of Hearing documents she immediately "cut a cheque" and returned the deposit. I fully accept the landlords testimony that this was an error and that no malicious intent

was the reason why it wasn't returned however that does not relieve the landlord of their obligation under the Act. Section 38 of the Act clearly addresses this issue.

> Section 38 (1) says that except as provided in subsection (3) or (4) (a), within 15 days after the later of
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> > (a) the date the tenancy ends, and
> >
> > (b) the date the landlord receives the tenant's forwarding address in writing,
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> the landlord must do one of the following:
>
> > (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;
> >
> > (d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.
>
> And Section 38 (6) **says if a landlord does not comply with subsection (1), the landlord**
>
> > (a) may not make a claim against the security deposit or any pet damage deposit, and
> >
> > (b) **must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable**.

The landlord did not file for dispute resolution or return the security deposit within the legislated timelines. I find that the tenant is entitled to the return of double the security deposit in the amount of $700.00 – the $350.00 that has already been returned for an entitlement of $350.00.

Tenants' Second Claim – The tenant is seeking $1136.25 as compensation for having to deal with an ongoing water leak. The tenant provided a calculation based on the rent paid over the term of the tenancy and the square footage of the area covering the days the issue was present. The tenant stated that the first water leak occurred on May 22, 2013. The upstairs tenant had overflowed their toilet. The tenant stated that it was leaking for approximately 20 minutes. The tenant stated that the overflow caused damage to the ceiling in his living room and to his carpet. The tenant stated that he

notified the landlord of this issue the following day. The tenant stated that the landlord did not at anytime shampoo the carpet or had it professionally cleaned. The tenant stated that the issues were ongoing until August 1, 2013. The tenant stated that they had contacted the local health authority to inspect the unit. The health inspector found evidence that mold exists. The tenant stated the health inspector was going to contact the landlord and advise of the situation and follow up at a later date. The tenant stated that he also had an issue with a leak in his shower that was ongoing from the outset of the tenancy. The tenant stated that he advised the landlord on the move in inspection report that he had conducted on his own and that the matter was never addressed.

The landlord adamantly disputed this portion of the tenants' application. The landlord stated that the tenant was fully aware of the age, condition and state of this unit at move in. The landlord stated that whenever the tenant informed him of any problem he himself or a member of his staff would immediately address it. The landlord stated that the tenant would stop communicating for extended periods of time. The landlord stated that the work was conducted over a protracted time frame at the direction of the health inspector. The landlord stated that they had done everything they were directed to do and where fully compliant to the orders of the health inspector. The landlord stated that he and his staff were frustrated along with the tenant as this matter carried on longer than they had wished. The landlord stated that many attempts to correct the problem were made.

When a party makes a claim for damage or loss the burden of proof lies with the applicant to establish their claim. To prove a loss the applicant must satisfy the following four elements:

1. Proof that the damage or loss exists,
2. Proof that the damage or loss occurred due to the actions or neglect of the other party in violation of the Act, Regulation or tenancy agreement,
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage, and
4. Proof that the applicant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

Based on the above I find that tenant has not satisfied me on all four of the above grounds as required, specifically #2 and #4. I find that the landlord was conducting their business in accordance with the Act and that they were making all reasonable attempts to mitigate the problem. I do not find fault in how the landlord was conducting their business but I do find the value of the tenancy to be diminished to a limited extent. The landlords were very forthright in acknowledging some issues. I do not agree with the

amount being sought by the tenant but I do find a nominal amount in favour of the tenant is appropriate under the circumstances and that amount is $150.00.

Conclusion

The tenant has established a claim for $500.00. I grant the tenant an order under section 67 for the balance due of $500.00. 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*.

Dated: April 14, 2014

Residential Tenancy Branch