



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MND, MNSD, MNDC, MNR, FF

Introduction

The hearing was convened to deal with an application by the landlord for a monetary order for damages and to retain the security deposit in satisfaction of the claim. The application was also convened to hear a cross application by tenant for the return of the tenant's security deposit and aggravated damages.

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. I have considered all of the affirmed testimony and relevant evidence that was properly served on the other party and submitted to the file at the Residential Tenancy Branch at least 5 days in advance of the hearing pursuant to the Act. The parties were also permitted to present affirmed oral testimony and to make submissions during the hearing.

Preliminary Matter: Service of Respondent's Evidence

I accept evidence that proves the tenant had served the Application and documentary evidence on the landlord by registered mail.

The landlord testified that they served the first package, including some evidence, on the tenant by registered mail sent on November 27, 2013. I accept the evidence proving that this was served in accordance with the Act.

However, the landlord testified that they then sent a second package with evidence by registered mail on February 26, 2014 and this evidence was not found in the Residential Tenancy Branch file. The tenant stated that they did not receive the landlord's second evidence package at all.

I find that Rule 4 of the Residential Tenancy Rules of Procedure states that, if the respondent intends to dispute an Application for Dispute Resolution, copies of all available documents or other evidence the respondent intends to rely upon must be

received by the Residential Tenancy Branch and served on the applicant as soon as possible and at least five (5) days before the dispute resolution proceeding.

If the date of the dispute resolution proceeding is scheduled at a time that does not allow the five (5) day requirement in a) to be met, then all of the respondent's evidence must be received by the Residential Tenancy Branch and served on the applicant at least two (2) days before the dispute resolution proceeding.

In this instance the landlord mailed the second evidence package on February 26, 2014. I note that section 90 of the Act provides direction for when a document is deemed to have been served, as follows:

(a) if given or served by mail, on the 5th day after it is mailed;

Therefore, a Notice mailed on February 26, 2014, would be deemed to be received on March 3, 2014.

In addition to the above, The "*Definitions*" portion of the Rules of Procedure states that when the number of days is qualified by the term "at least" **then the first and last days must be excluded**. If served on a business, it must be served on the previous business day. Weekends or holidays are excluded in the calculation of days for evidence being served on the Residential Tenancy Branch.

Given the above, I find that the landlord's second evidence package was not served in time to be considered. However, the landlord's verbal testimony was considered.

Issues to be Decided for the Tenant's Application

- Is the tenant entitled to a refund of double the security deposit paid?
- Is the tenant entitled to aggravated damages?

Issues to be Decided for the Landlord's Application.

- Is the landlord entitled to compensation under section 67 of the *Act* for repairs, and cleaning?

Background and Evidence

The tenancy began on Jan 1, 2013 and ended on October 31, 2013. The monthly rent was \$750.00. A security deposit of \$375.00 and a pet damage deposit of \$100.00 had been paid.

A forwarding address was provided to the landlord at the end of the tenancy on October 31, 2013

The landlord applied for dispute resolution seeking an order to keep the security deposit on November 18, 2013.

The tenant stated that the landlord sent them a partial refund of \$75.00 of the deposits in November 2013, but the tenant did not cash the cheque.

The tenant stated that, because the landlord did not refund the security deposit within 15 days the tenant is claiming a refund of double the security deposit and pet damage deposit in the total amount of \$950.00.

The tenant also testified that they are claiming \$500.00 in aggravated damages because, according to the tenant, the landlord purposely undermined their efforts to get approval for another rental unit by lying to a prospective landlord who had called for a reference. The tenant testified that the landlord gave false information and about the tenant's character.

The landlord acknowledged that they spoke to a landlord looking for a reference for the tenant, but testified that only truthful information was provided. The landlord testified that they did not purposely sabotage the tenant's search for a new apartment.

The total compensation being sought by the tenant is \$1,500.00.

In regard to the landlord's application, the landlord testified that they are seeking monetary compensation in the amount of \$400.00 for the following claims:

- \$125.00 for repairing and painting the walls
- \$50.00 to clean the driveway
- \$50.00 to remove pet urine smells
- \$125.00 for cleaning services
- \$50.00 for a missing broiler
- \$50.00 for the cost of the application

The landlord submitted a copy of the tenancy agreement, copies of communications, and a copy of the move-in condition inspection report signed by the landlord and tenant. The move-in condition inspection report had no comments, codes nor any other notations in the spaces beside each area listed on the report. The landlord stated that the fact that the form was left blank was an indication that the condition of the unit was pristine and there was no damage at all.

The move-in condition inspection report form also showed the move-in date had been typed in the space actually reserved for the "*MOVE-OUT DATE*". The landlord pointed out that this was done in error.

No move-out condition inspection report was in evidence to document the condition that the unit was left in at the end of the tenancy. The landlord also acknowledged that they had never served the tenant with a Final Opportunity for a Move-Out Inspection on the approved form.

However, the landlord made reference to their photos that were submitted into evidence to show the condition of the unit at the end of the tenancy.

The tenant stated that they do not agree with any of the landlord's monetary claims for cleaning or damage.

Analysis – Tenant's Claim for Return of Double the Security Deposit

In regard to the return of the security 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 to the tenant or make an application for dispute resolution to claim against the security deposit.

The landlord must either make the application for dispute resolution seeking to keep the security deposit or refund the security deposit within 15 days after the tenancy had ended and the written forwarding address was received.

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.

In this instance I find that the landlord received the tenant's written forwarding address by October 31, 2013, when the tenancy ended. I find that the landlord made the application for dispute resolution on November 18, 2013 which is beyond the 15-day deadline.

Accordingly, I find that the tenant is entitled to receive a credit or refund of double the \$375.00 security deposit and \$100.00 pet damage deposit. I find that the landlord is holding \$950.00 in trust for the tenant..

Landlord's Cleaning and Repair Claim

With respect to a monetary claim for damages and loss, it is important that the evidence furnished by an applicant/claimant 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 for the claimed loss or to rectify the damage, and
4. Proof that the claimant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage.

Section 37(2) of the Act states that, when a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.

To determine whether or not the tenant had complied with this requirement, I find that this can best be established through the submission of move-in and move-out condition inspection reports containing both the landlord's and the tenant's signatures.

Completing move-in and move out condition inspection reports is a requirement under the Act pursuant to section 23(3) and section 35. The Act places the obligation on the landlord to complete the condition inspection report in accordance with the regulations. Both the landlord and tenant must sign the condition inspection report, after which the landlord must give the tenant a copy of that report in accordance with the regulations.

In this instance, I find that a move-in condition inspection report was signed, but it appears to be incomplete due to the fact that all of the spaces reserved for comments or codes beside each room and feature were left blank. In any case, I find that the fact that no move-out condition inspection report was completed or submitted into evidence adversely impacts the landlord's ability to prove the "before" and "after" conditions of the unit to support the landlord's claim.

I find that the landlord has the burden of proof to justify the claim for damages and, although the landlord has offered verbal testimony in regard to the expenditures allegedly caused by the tenants, I find that the claim is not sufficiently supported by documentary evidence. Moreover, the tenant is disputing the claims.

Due to insufficient evidence from the landlord and the lack of properly completed and signed move-in and move-out condition inspection reports, I find that the

landlord's claims are not adequately supported by evidence and must be dismissed.

Tenant's claim for Aggravated Damages

With respect to the tenant's claim of \$500.00 because the landlord allegedly sabotaged the tenant's search for housing by lying to landlords seeking a reference, I find that the tenant neglected to submit sufficient evidence to support that this occurred. I accept that the landlord did speak with other landlords and that the landlord gave them information about the tenants. However, I find that the landlord was at liberty to provide data from the landlord's perspective, whether or not the tenant feels that it was accurate.

I further find that the tenant has not sufficiently established that they suffered a tangible monetary loss in the amount of \$500.00. I find that that a situation of this nature does not justify the awarding of aggravated damages for intangible losses as it fails to meet the criteria.

Aggravated damages are designed to compensate the person wronged, for aggravation to the injury caused by the wrongdoer's willful or reckless indifferent behaviour.

I find that, to justify aggravated damages, the conditions must be sufficiently significant in depth, or duration, or both, such that they represent a profound influence on the wronged person's life. They are awarded where the person wronged cannot be fully compensated by an award for pecuniary losses.

In the case before me, I find that there are not sufficient grounds to award aggravated damages. Therefore, this portion of the tenant's application is dismissed.

Based on the evidence before me I find that the landlord's application must be dismissed without leave.

Based on the evidence before me, I find that the tenant is entitled to total compensation of \$1000.00 comprised of \$750.00 representing double the \$375.00 security deposit, double the \$200.00 pet damage deposit and the \$50.00 cost of the application.

The remainder of the tenant's application is dismissed without leave.

I hereby grant the tenant a monetary order in the amount of \$1,000.00. This order must be served on the landlord and may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

Conclusion

The tenant is partly successful in their application and the tenant is granted a refund of double the security deposit. The remainder of the tenant's application is dismissed and the landlord's application is dismissed in its entirety 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: March 04, 2014

Residential Tenancy Branch

