

DECISION

Dispute Codes: MNDC, MNSD, FF

This hearing dealt with an application by the tenants for a monetary order for 1) money owed and compensation for loss under the *Act* or tenancy agreement and 2) the amount of the security deposit, applicable accrued interest, double the security deposit.

During the hearing, the tenants withdrew their claim for aggravated damages in the amount of \$950.00.

On August 30, 2008, the landlord collected a security deposit in the amount of \$450.00 from the tenants. The tenancy started on September 16, 2008. A monthly rent in the amount of \$900.00 was payable in advance on the first day of each month. The rental unit is a two bedroom unit located on the lower floor of a house. On January 5, 2009, a fire broke out in the unit located on the upper floor of the house. The tenants called the fire department. Thereafter, the police arranged for the tenants to move to a hotel where the tenants stayed for the next 3 days. During these 3 days, both the heat and electricity to the house were shut off due to fire hazard.

On January 6, 2009, the tenants, the landlord's property manager, JY, and a representative from the landlord's insurance company had a meeting. The tenants gave the following evidence regarding agreements made by all parties during the meeting. The tenants, JY, and the insurance company representative agreed that the tenants could no longer live in the unit. JY gave permission for the tenants to leave their belongings in the unit while searching for another place to rent. JY denied the tenant's assertion that the unit was no longer livable. She said that she had asked the tenants to give her a notice to end tenancy effective January 31, 2009 but the tenants did not do so.

The tenants said that after their stay at the hotel, they moved to a relative's home. Meanwhile, they found another unit to rent and on January 31, 2009, they moved to this unit. The tenants also said that on February 8, 2009, they tried to return the key of the unit to the JY but JY told them to wait until the landlord's return to British Columbia in March.

On March 11, 2009, the tenants sent a letter to the landlord by registered mail asking for the return of their security deposit.

Issue #1 – Whether the tenants are entitled to a monetary order for money owed and compensation under the *Act* or the tenancy agreement?

The tenants are seeking recovery of the January rent in the amount of \$900.00 and moving expenses in the amount of \$600.00.

The tenants maintained that the unit was not livable after the fire and that they could not move back into the unit after their 3 day stay at the hotel. The landlord maintained that the unit was livable 3 days after the fire and that the tenants could have moved back into the unit. He referred to the utility bills for the house which show that electricity and gas were restored 3 days after the fire. He added that his insurance company could confirm that no repair or renovation of the unit was required after the fire. No evidence was adduced to indicate that the unit was not livable 3 days after the fire. Based on the above, I find that the tenants have not proven that the unit was not livable 3 days after the fire. The tenants are seeking recovery of the January rent in the amount of \$900.00. Based on my finding above, I find that the tenants are entitled to recovery of 3 days rent for January in the amount of \$87.10. The tenants are also seeking recovery of moving cost in the amount of \$600.00. Based on my finding above, I find that the tenants are not entitled to such recovery and I dismiss their claim in this regard.

Issue #2 – Whether the tenants are entitled to a monetary order for the return of the security deposit, the applicable accrued interest and double the security deposit?

Section 38 of the *Residential Tenancy 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 the tenant is entitled to recovery of double the base amount of the security deposit. I find that the tenancy ended on January 5, 2009, and that the tenants provided their forwarding address in writing on March 11, 2009 by registered mail. I further find that the landlord has failed to repay the security deposit or make an application for dispute resolution within 15 days of receiving the tenant's forwarding address in writing.

I find that the tenants have established a claim for the security deposit of \$450.00, accrued interest of \$2.29, and double the base amount of the security deposit in the amount of \$450.00, for a total of \$902.29.

Conclusion

The tenants have established a total claim of \$989.39 comprised of \$87.10 as compensation for 3 days rent for January and \$902.29 as return of the security deposit, applicable accrued interest and double the security deposit. The tenants are also entitled to recover the \$50.00 filing fee for this application. I grant the tenants an order under section 67 for the balance due of \$1039.39. This order may be filed in the Small Claims Court and enforced as an order of that Court.

Dated June 23, 2009.