

DECISION

Dispute Codes MNSD FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Tenants to obtain a Monetary Order for the return of the security deposit and to recover the cost of the filing fee from the Landlords for this application.

Service of the hearing documents, by the Tenants to the Landlords, was done in accordance with section 89 of the *Act*, sent via registered mail on October 13, 2009. The Landlords confirmed receipt of the hearing package and copies of the Tenants' evidence.

The Landlords confirmed that they did not provide a copy of their evidence to the Tenants.

Both Landlords and the male Tenant appeared, gave affirmed testimony, were provided the opportunity to present their evidence orally, in writing, and in documentary form.

Issues(s) to be Decided

Are the Tenants entitled to a monetary order for the return of their security deposit pursuant to section 38 of the *Residential Tenancy Act*?

Background and Evidence

The undisputed testimony was the verbal month to month tenancy agreement began on May 1, 2009 and ended when the Tenants vacated the rental unit on July 31, 2009. The monthly rent was payable on the first of each month in the amount of \$1,000.00 and a security deposit of \$500.00 was paid on April 19, 2009. The female Tenant provided verbal notification to the Landlords on July 30, 2009 that they were ending their tenancy and written notification of the Tenants' forwarding address was provided to the Landlords on July 31, 2009 by the male Tenant.

The Tenant testified that the rental unit was a basement suite and that the Landlords resided in the upper level of the house. The Tenant argued that whenever the Landlords were home they would party late in to the evening which caused the Tenant stress and created an unhealthy environment where the Tenants felt disrespected.

The Landlords argued that when they met in April 2009 to negotiate the tenancy agreement the Landlords informed the Tenants verbally that they liked to party when they were home on weekends and that the quiet time would begin at midnight.

The Landlords confirmed that they were not issued an Order from the Residential Tenancy Branch allowing them to retain the security deposit; that they have not previously applied for dispute resolution; and they do not have written permission from the Tenants to withhold the security deposit.

Analysis

The Landlords confirmed that they did not provide the Tenants with copies of their evidence in contravention of section 4.1 of the *Residential Tenancy Branch Rules of Procedure*. Considering evidence that has not been served on the other party would create prejudice and constitute a breach of the principles of natural justice. Therefore as the applicant Tenants have not received copies of the Landlords' evidence I find that the Landlords' evidence cannot be considered in my decision. I did however consider the Landlords' testimony.

Based on the Tenants' evidence and both party's testimony, the tenancy ended on July 31, 2009 and the Tenants provided the Landlords with their forwarding address, in writing, on July 31, 2009.

Section 38(1) of the *Act* stipulates that if within 15 days after the later of: 1) the date the tenancy ends, and 2) the date the landlord receives the tenant's forwarding address in writing, the landlord must repay the security deposit to the tenant with interest or make application for dispute resolution claiming against the security deposit or pet damage. In this case the Landlords would have had to either make an application for dispute resolution or return the security deposit by August 15, 2009.

As the Landlords have not complied with section 38 of the *Act*, I find that the Tenants have succeeded in proving the merits of their claim and I hereby award the Tenants the return of their \$500.00 security deposit.

As the Tenants have been successful with their application I hereby award them recovery of the \$50.00 filing fee.

Monetary Order – I find that the Tenants are entitled to a monetary claim as follows:

Return of security deposit \$500.00 plus interest of \$0.00	\$500.00
Recovery of the filing fee	50.00
TOTAL AMOUNT DUE TO THE TENANTS	\$550.00

Conclusion

I HEREBY FIND in favor of the Tenants' monetary claim. A copy of the Tenants' decision will be accompanied by a Monetary Order for **\$550.00**. The order must be served on the respondent Landlords and is enforceable through the Provincial Court 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: February 03, 2010.

Dispute Resolution Officer