

DECISION

Dispute Codes

MNSD, OLC, MNDC

Introduction

This hearing was started on January 22, 2010 and was adjourned to today's date to allow the application to re-send evidence that was not received by the Dispute Resolution Officer before this hearing. The hearing reconvened and dealt with an Application for Dispute Resolution by the tenants for the return of double the security deposit and to obtain an Order for the landlord to comply with the *Residential Tenancy Act (Act)* with regard to the reasons stated on the two month Notice.

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 02, 2009. This also included the amended application. Mail receipt numbers were provided in the tenant's documentary evidence. The tenants did not have the landlord's address of residence so have sent the documents to the landlords business address which is the rental unit. The landlords were deemed to be served the hearing documents on October 07, 2009, the fifth day after they were mailed as per section 90(a) of the *Act*.

The tenants appeared, gave affirmed testimony, were provided the opportunity to present their evidence orally, in writing, and in documentary form.

There was no appearance for the landlords on either hearing day, despite being served notice of these hearings in accordance with the *Residential Tenancy Act*. All of the testimony and documentary evidence was carefully considered.

Issues(s) to be Decided

- Are the tenants entitled to double the security deposit?
- Are the tenants entitled to an Order for the landlord to comply with the *Act* to recover the equivalent of double their monthly rent?

Background and Evidence

This month to month tenancy started on February 18, 2009 and ended on August 31, 2009. The tenants paid a monthly rent of \$1,200.00 which was due on the first of each month. The tenants

paid a security deposit of \$600.00 in March 2009. The tenants gave the landlords their forwarding address in writing on August 31, 2009.

The tenant's claim the landlord served them with a Two Month Notice to End Tenancy for the landlords use of the property on June 04, 2009 this gave an effective date to end the tenancy of August 07, 2009. The tenant's state that the reason given on the Notice was: the rental unit will be occupied by the landlord, the landlords spouse or a close family member of the landlord or the landlord's spouse.

The tenants had some concerns about this Notice as the landlords tried to sell the property while the tenants were still residing in it. Realtors came to the property and a For Sale board is still outside the property along with a notice to foreclose on the property. The tenants testify that the property has remained empty since they moved out and has not been used for its intended purpose. The tenants have provided Real Estate business cards left at the property and notices from the landlords to enter the property for viewings.

The tenants also claim the landlords have not returned their security deposit since receiving their forwarding address on August 31, 2009. The tenants claim double the return of their deposit and double the monthly rent in compensation because the landlords have not complied with the Act.

Analysis

In the absence of any evidence from the landlords despite having two opportunities to attend this hearing; I will deal with the tenants claim for compensation for the landlords not using the property for the intended purpose given on the Two Month Notice;

In this matter I find the tenants have not made an application for money owed or compensation for damage or loss under the *Act* but did make an application for an Order for the landlords to comply with the *Act*. As the landlords would not be aware that the tenants were seeking a Monetary Order it would be unfair to agree to amend the tenants application for them to recover an amount equivalent to double their monthly rent. I do find however the landlord's reason given on the Notice to End Tenancy has not been accomplished and the tenant's testimony and evidence indicates that the landlords have been trying to sell the property and have not used it

for its intended purpose. Therefore, the tenants are at liberty to reapply for money owed or compensation for damage or loss under the Act from the landlords.

The tenants have asked for an Order for the landlords to comply with the Act, however, as the tenants have moved from the rental unit no Order would be necessary at this time.

With regards to the tenants claim for double the security deposit; Section 38(1) of the *Act* says that a landlord has 15 days from the end of the tenancy agreement or from the date that the landlord receives the tenants address in writing to either return the security deposit to the tenant or to make a claim against it by applying for Dispute Resolution. If a landlord does not do either of these things and does not have the written consent of the tenant to keep all or part of the security deposit then pursuant to section 38(6) of the *Act*, the landlord must pay double the amount of the security deposit (plus any interest accrued on the original amount) to the tenant

I find that the landlords did receive the tenants forwarding address in writing by August 31, 2009. As a result, the landlord had until September 15, 2009 to return the tenants security deposit or apply for Dispute Resolution to make a claim against it. I find the landlords did not return the tenants security deposit consequently, pursuant to section 38(6) of the *Act*, the landlords must pay the tenants double the amount of their security deposit to a sum of **\$1,200.00**.

Conclusion

I HEREBY FIND in favor of the tenants monetary claim. A copy of the tenant's decision will be accompanied by a Monetary Order for **\$1,200.00** pursuant to section 67 of the *Act*.

The order must be served on the respondent 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: March 11, 2010.

Dispute Resolution Officer