

DECISION

Dispute Codes

MNSD MNDC FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Tenant to obtain a monetary order for the return of the balance of her security deposit, for compensation for damage or loss under the Act, Regulation, or tenancy agreement, and to recover the cost of the filing fee from the Landlords for this application.

Service of the hearing documents, by the Tenant to each Landlord, was done in accordance with section 89 of the *Act*, sent via registered mail on December 22, 2009. Mail receipt numbers were provided in the Tenant's verbal testimony and documentary evidence. The Landlords are deemed to be served the hearing documents on December 27, 2009, the fifth day after they were mailed as per section 90(a) of the *Act*.

The Tenant appeared, gave affirmed testimony, were provided the opportunity to present her evidence orally, in writing, and in documentary form. No one attended on behalf of the Landlords despite the Landlords being served in accordance with the Act.

Issues(s) to be Decided

Is the Tenant entitled to a Monetary Order under sections 38 and 67 of the *Residential Tenancy Act*?

Background and Evidence

The Tenant testified that she entered into a written tenancy agreement with the Landlords effective October 15, 2008. Rent was payable on the first of each month in the amount of \$1,200.00 and a security deposit of \$600.00 was paid to the Landlords on October 12, 2008. The Tenant paid the Landlords \$2,400.00 on October 12, 2008, which consisted of \$600.00 for ½ month's rent for October 2009, \$600.00 security deposit, and \$1,200.00 for November 2009 rent, as supported by the Tenant's documentary evidence of a copy of her cleared cheque # 22. No move-in or move-out inspection reports were completed by the Landlords.

The Tenant testified that on approximately September 15, 2009 both Landlords attended the rental unit and handed the Tenant's friend a letter outside of the rental unit, while the Tenant was inside the unit. The Tenant confirmed the letter was hand written, dated September 15, 2009, and stated that the Landlords were providing the Tenant two months notice to end the tenancy effective November 15, 2009, because the male Landlord was going to be occupying the rental unit.

The Tenant argued after further discussions with the Landlords she advised the Landlords she would be vacating the rental unit by October 31, 2009. The Tenant

stated that during the week of October 22, 2009 the male Landlord attended her place of employment and discussed his ability to move in earlier. The Tenant argued that she told the Landlord she had moved a lot of her possessions out of the unit so the Landlord could bring in a few of his items earlier than October 31, 2009, but that the Landlord was to contact the Tenant to let her know what he had decided to do.

The Tenant advised that when she was at work on October 30, 2009, the Landlord attended the rental unit, without prior written notice, and he began to unload five truck loads of his possessions into the rental unit along with himself and his daughter. The Tenant argued that she did not feel comfortable residing in the rental unit with the Landlord and after discussing the Landlord's failure to notify her, she agreed to have the Landlord move her remaining possessions onto the deck. The Tenant argued she told the Landlord she wanted to have the opportunity to finish cleaning the unit so she could get all of her security deposit back and that the Landlord told her the unit was clean enough and she could stop by the next day and he would give her a cheque for the full refund of her security deposit.

The Tenant advised that when she returned October 31, 2009, the Landlord was not at home and from that point onward would not return her calls. On November 20, 2009, the Tenant sent a letter dated November 19, 2009, to the Landlords with her forwarding address and requested the return of her security deposit. On December 7, 2009 the female Landlord confirmed receipt of the Tenant's letter.

The Tenant confirmed that she was told by the female Landlord to deal directly with the male Landlord for her security deposit and she was finally able to meet up with the male Landlord in person near the middle of December 2009, to demand her security deposit be returned. The Tenant stated the male Landlord kept telling her he didn't have money to give to her. On December 13, 2009, the male Landlord attended the Tenant's residence and stuck \$300.00 cash into her door.

The Tenant testified the Landlords did not provide her with one month's compensation for ending her tenancy so she is seeking the one month compensation of \$1,200.00, the balance of her security deposit of \$300.00, plus interest owed on the security deposit, and compensation equal to two days rent to compensate for the Landlord occupying the unit two days before the end of her tenancy.

Analysis

All of the testimony and documentary evidence was carefully considered.

In this case the female Landlord and male Landlord entered into a tenancy agreement with the Tenant prior to the Landlord's marriage separation. Therefore, I find the Landlords to be jointly and severally liable for any debts or damages relating to the tenancy.

I find that in order to justify payment of loss under section 67 of the *Act*, the Applicant Tenant would be required to prove that the other party did not comply with the *Act* and that this non-compliance resulted in losses to the Applicant pursuant to section 7. It is important to note that in a claim for damage or loss under the *Act*, the party claiming the damage or loss; in this case the Tenant bears the burden of proof.

The evidence supports that the Tenant provided the Landlords with her forwarding address via mail on November 19, 2009, and in accordance with section 90 of the *Act* the Landlords are deemed to have received the forwarding address five days later on November 24, 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. In this case the Landlords were required to return the Tenant's security deposit in full or file for dispute resolution no later than December 9, 2009. The Landlord's did neither, however they did give the Tenant \$300.00 on December 13, 2009.

Based on the above, I find that the Landlords have failed to comply with Section 38(1) of the *Act* and that the Landlords are now subject to Section 38(6) of the *Act* which states that if a landlord fails to comply with section 38(1) the landlord may not make a claim against the security deposit and the landlord must pay the tenant double the security deposit.

I find that the Tenant has succeeded in proving the test for damage or loss as listed above and I approve her claim for the return of double her security deposit less the balance owed of her security deposit plus interest.

Section 51 of the *Act* provides that a Tenant, who receives a notice to end tenancy for landlord's use of the property under section 49 of the *Act*, is entitled to receive from the landlord an amount that is the equivalent of one month's rent payable under the tenancy agreement. Therefore I find the Tenant has proven the test for damage and loss and I approve her claim of \$1,200.00 for one month's compensation.

The Tenant confirmed that after receiving the two month notice to end tenancy effective November 15, 2009, she agreed to end the tenancy on October 31, 2009. The evidence supports the Landlord entered the rental unit on October 30, 2009, without posting a 24 hour notice to enter, without the Tenant's permission, and the Landlord summarily evicted the Tenant and took over the rental unit, in contravention of the *Act*. Therefore I approve the Tenant's claim for compensation of \$78.90 ($\$1,200.00 \times 12 \text{ months} \div 365 \text{ days} \times 2 \text{ days}$).

I find that the Tenant has succeeded with her application therefore I award recovery of the \$50.00 filing fee.

Monetary Order – I find that the Tenant is entitled to a monetary claim as follows:

Double security deposit	\$1,200.00
Less amount of security deposit returned late	-300.00
Interest owed on \$600.00 security deposit from October 12, 2008 to December 13, 2009	1.99
Interest owed on the Security Deposit of \$300.00 from December 13, 2009 to May 25, 2010	0.00
One month's compensation for notice to end tenancy	1,200.00
Compensation for two days rent	78.90
Filing Fee	50.00
TOTAL AMOUNT DUE TO THE TENANT	\$2,230.89

Conclusion

I HEREBY FIND in favor of the Tenant's monetary claim. A copy of the Tenant's decision will be accompanied by a Monetary Order for **\$2,230.89**. 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: May 25, 2010.

Dispute Resolution Officer