

DECISION

Dispute Codes MNDC MNSD FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Tenants for a Monetary Order for the return of their security deposit, for money owed or compensation for damage or loss under the Act, regulation, or tenancy agreement, and to recover the cost of the filing fee from the Landlord for this application.

Service of the hearing documents, by the Tenants to the Landlord, was conducted in person at the Landlord's residence on May 4, 2010, at 3:15 p.m. in the presence of a witness.

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

The Landlord did not appear at the teleconference hearing despite being served notice of today's hearing in accordance with the Act.

Issues(s) to be Decided

Are the Tenants entitled to a Monetary Order pursuant to sections 38, 67, and 72 of the *Residential Tenancy Act*?

Background and Evidence

Tenant (1) testified that when they served the Notice of Dispute Resolution Hearing documents to the Landlord, she accepted them and then through them on the ground saying she did not want them.

Both Tenants confirmed they entered into a verbal tenancy agreement for a month to month tenancy. Rent was payable on the first of each month in the amount of \$735.00 and a security deposit of \$362.50 was paid to the Landlord on December 4, 2009.

The Tenants argued that on December 4, 2009, they made arrangements with the Landlord to occupy the partially furnished basement suite on December 16, 2009 for the cost of one half of a month's rent. However when they went to pay the Landlord on

December 16, 2009, the Landlord demanded a full month's rent and threatened to take the Tenants to court if they did not comply. The Tenants paid the \$735.00 to the Landlord for December 2009 rent.

After settling into the rental unit the Tenants realized that the Landlord was entering the unit without proper notice and bringing strangers into their living space. They referred to their evidence in support of their testimony which included copies of letters issued by the Landlord dated December 18, 2009 and December 21, 2009, which were left in the rental unit by the Landlord after she had entered without prior notice. When Tenant (1) attended the rental unit on December 25, 2009, she found the suite had been locked with the deadbolt which prevented the Tenant from gaining access to the unit. Tenant (1) went directly upstairs to the Landlord's residence and asked why they were locked out of the rental unit. Tenant (1) stated the Landlord responded by accusing the Tenants of stealing a bed mattress from the unit and said that is why she locked the Tenants out of the unit. Tenant (1) accompanied the Landlord into the rental unit where she was able to show the Landlord the mattress was still there. The Tenant stated that this was the deciding factor to vacate the rental unit immediately as the Landlord had obviously continued to enter the rental unit, without notice, and rummage through the Tenant's possessions and private property.

Tenant (2) had left the rental unit on December 23, 2009, to attend a family Christmas. The Tenants agreed that Tenant (1) would pack up both of their belongings and move out of the rental unit immediately. The Tenants stated they did not feel safe in the rental unit as the Landlord continued to enter the rental unit whenever she wanted to and she ignored their requests to provide notice of entry. They felt they had no other option but to vacate the unit as soon as possible. The Landlord even entered the rental unit, without notice, while Tenant (1) was packing and asked her what she was doing. The Landlord later contacted Tenant (1)'s mother to discuss the situation.

They stated that they now know that they should have gone to the Residential Tenancy Branch to seek assistance to end the tenancy however they attempted to resolve this on their own.

The Tenants provided the Landlord with written notice of their forwarding address on January 4, 2010, as supported by their evidence, and requested the return of their security deposit and the month's rent paid. The letter was placed in the Landlord's mail box at her residence on January 4, 2010, in the presence of a witness.

Analysis

All of the testimony and documentary evidence was carefully considered.

Given the evidence before me, in the absence of any evidence from the Landlord who did not appear despite being properly served with notice of this proceeding, I accept the version of events as discussed by the Tenants and corroborated by their evidence.

I find that in order to justify payment of loss under section 67 of the *Act*, the Applicant Tenants would be required to prove that the other party did not comply with the *Act*.

In this case the evidence supports the Landlord entered the rental unit from the onset of the tenancy, without proper notice, and continued to do so even after the Tenants requested her to stop. The Landlord's actions are in direct contravention of section 29 of the *Act* which states a landlord must not enter a rental unit that is subject to a tenancy for any purpose unless at least 24 hours and not more than 30 days before the entry, the landlord gives the tenant written notice of entry that includes the purpose for entering, which must be reasonable; and the date and the time of entry, which must be between 8 a.m. and 9 p.m.

Section 28 of the *Act* states that a tenant is entitled to quiet enjoyment including, but not limited to, rights to the following: reasonable privacy; and freedom from unreasonable disturbance; and exclusive possession of the rental unit; and use of common areas for reasonable and lawful purposes free from significant interference. Based on the aforementioned I find that the Landlord prevented the Tenants from their entitlement to quiet enjoyment of the rental unit for the entire period they occupied the rental unit. Therefore I find the Tenants are entitled to monetary compensation for their loss of quiet enjoyment in the amount of \$735.00.

The evidence supports that the tenancy ended on December 25, 2009, and the Tenants provided the Landlords with their forwarding address on January 4, 2010.

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 Landlord was required to return the Tenants' security deposit in full or file for dispute resolution no later than January 19, 2010.

Based on the above, I find that the Landlord has failed to comply with Section 38(1) of the *Act* and that the Landlord is 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 Tenants have succeeded in proving the Landlord has failed to comply with the Act and I approve their claim for the return of double the security deposit plus interest.

I find that the Tenants have succeeded with their application therefore I award recovery of the \$50.00 filing fee.

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

Compensation for loss of quiet enjoyment	\$735.00
Double the security deposit (2 x \$362.50)	725.00
Filing Fee	50.00
TOTAL AMOUNT DUE TO THE TENANT	\$1,510.00

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 **\$1,510.00**. The order must be served on the respondent Landlord 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: September 14, 2010.

Dispute Resolution Officer