



Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes MNDC, MNSD, FF

Introduction

This hearing dealt with an application by the tenant for a monetary order and an order for the return of her security deposit. The tenant presented evidence showing that the landlord was served with the application for dispute resolution and notice of hearing by registered mail on May 15. The registered letter was returned to the tenant as unclaimed by the landlord. The landlord cannot avoid service by refusing to collect a registered letter. I found that the landlord had been properly served with notice of the hearing and the hearing proceeded in her absence.

Issues to be Decided

Is the tenant entitled to a monetary order as claimed?

Is the tenant entitled to an order for the return of her security deposit?

Background and Evidence

The tenant's undisputed testimony is as follows. The tenancy began on November 15, 2008 and ended in early April 2010. Rent was set at \$1,100.00 per month plus an additional \$100.00 per month for utilities. The tenant paid a \$550.00 security deposit at the outset of the tenancy. The rental unit is located on the lower floor of a residence in which the landlord occupied the upper floor.

Throughout the tenancy the tenant encountered repair issues which she repeatedly brought to the landlord's attention and requested repairs. The landlord failed to perform repairs despite the tenant's repeated requests. The tenant's complaints included water

backing up into her shower, a leak from the shower, a malfunctioning toilet, broken closet and cupboard doors, lack of heat, an inoperable exterior light, a leaking refrigerator and broken heater knobs. The tenant provided copies of letters showing that she complained a number of times in writing about the same issues. The tenant seeks \$822.00 in compensation for loss of quiet enjoyment as a result of the landlord's failure to repair the unit.

The tenant also seeks the return of her security deposit. The tenant provided her forwarding address in writing to the landlord at the end of the tenancy and on April 28 the landlord sent the tenant a cheque for \$278.06 together with a letter advising that she was retaining the balance of the deposit for damages and NSF fees.

Analysis

I accept the tenant's undisputed evidence and find that the landlord failed to maintain the rental unit in a reasonable fashion during the 1 ½ year tenancy. I find the tenant was deprived of quiet enjoyment of the rental unit during that time and is entitled to compensation. I find the tenant's \$822.00 claim to be reasonable and I award her \$822.00.

Section 38(1) of the Act provides that the landlord must return the security deposit or apply for dispute resolution within 15 days after the later of the end of the tenancy and the date the forwarding address is received in writing. I find the landlord received the tenant's forwarding address in early April and I find the landlord failed to repay the entire security deposit or make an application for dispute resolution within 15 days of receiving the tenant's forwarding address and is therefore liable under section 38(6) which provides that the landlord must pay the tenant double the amount of the security deposit.

As she has already returned \$278.06, the landlord currently holds a security deposit of \$271.94 and is obligated under section 38 to return this amount together with the \$1.06 in interest which has accrued to the date of this judgment. The amount that is doubled is the \$271.94 which was wrongfully withheld. I award the tenant \$544.94.

The tenant is entitled to recover the \$50.00 filing fee paid to bring her application and I award her \$50.00.

Conclusion

The tenant is awarded \$1,416.94 which represents \$822.00 for loss of quiet enjoyment, \$544.94 for double the unreturned security deposit plus interest and the \$50.00 filing fee. I grant the tenant a monetary order under section 67 for \$1,416.94. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

Dated: September 28, 2010

Dispute Resolution Officer