

## **DECISION**

Dispute Codes      OPC FF  
                              MNSD MNDC OLC FF

### **Introduction**

This hearing dealt with cross applications for Dispute Resolution filed by both the Landlords and the Tenants.

The Landlords filed seeking an Order of Possession for Cause and to recover the cost of the filing fee from the Tenants for this application.

The Tenants filed seeking a Monetary Order for the return of their security deposit, for money owed for compensation for damage or loss under the Act, regulation or tenancy agreement, to obtain an Order to have the Landlords comply with the Act, 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*, served personally on October 6, 2010 to the Landlord's place of employment. The Landlords confirmed receipt of the hearing package.

The Landlords and Tenants appeared, gave affirmed testimony, confirmed receipt of the evidence submitted by the other party, were provided the opportunity to present their evidence orally, in writing, and in documentary form.

At the onset of the hearing the Landlords advised that they were withdrawing their application because the Tenants vacated the rental unit on October 2, 2010.

Issue(s) to be Decided

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

Are the Tenants entitled to an Order to have the Landlords comply with the Act in accordance with section 62 of the *Residential Tenancy Act*?

Background and Evidence

I heard undisputed testimony that the parties entered into a month to month tenancy agreement effective March 13, 2010. Rent was payable on the first of each month in the amount of \$1,200.00 and the Tenants paid a security deposit of \$600.00 and a pet deposit of \$400.00 on March 13, 2010. Police attended the rental unit on September 18, 2010; in response to a domestic dispute call when they found a marihuana grow operation inside the rental unit. The male Tenant was removed from the rental unit and advised not to return to the rental unit until after October 5, 2010. A 1 Month Notice to End Tenancy was issued and served personally to the Tenants on September 24, 2010.

The Tenants testified that unknown males knocked on their door on September 30, 2010 and threatened to cause the male Tenant harm. One male identified himself as being the Landlord's boyfriend. The female Tenant called the police however they did not attend because the males left the rental unit. The Tenants made no attempt to discuss this situation with the Landlords on September 30, 2010 and spoke with the Landlord's adult son on October 1, 2010 about the situation. The Tenants chose to vacate the rental unit on October 2, 2010, without notice to the Landlords and they confirmed they did not pay rent for October 2010. They cleaned the rental unit and took photos on October 2, 2010. They are seeking monetary compensation of \$3,300.00

which is comprised of \$1,000.00 for one week's lost wages so they could move and deal with their application for dispute resolution, \$1, 200.00 which is equal to one month's rent because they had to move, \$100.00 for loss of use of amenities such as internet because they left the rental unit, plus return of their pet deposit of \$400.00 and security deposit of \$600.00 because they cleaned the unit before they left.

The Landlords questioned when they could ask for an adjournment. They stated that one of them is out of town and did not have an opportunity to amend their application or file a cross application for damages and losses now that the Tenants have vacated the rental unit. I informed the Landlords that by proceeding with the Tenants' application today would not prevent the Landlords from filing a future claim and therefore I would not be granting an adjournment.

The hearing continued and the Landlords provided testimony that they knew nothing about a male who attended the rental unit and allegedly threatened the Tenants and nor does the Landlord have a boyfriend. The Landlords provided opposing testimony as to their whereabouts during the days at the end of September and beginning of October 2010 and confirmed that they found the keys to the rental unit in the locked box as described by the Tenants. The Landlords stated that they have not yet received the Tenants' forwarding address in writing and heard nothing of their request for the return of their deposits until they received a copy of the application for dispute resolution.

In closing the Tenants stated that they would have paid the October 2010 rent had they stayed however they felt they could not stay after being threatened. The Tenants provided a forwarding address during the hearing, as listed on the front page of this decision and confirmed that they did not provide a forwarding address prior to the hearing.

### Analysis

All of the testimony and documentary evidence was carefully considered.

### **Landlords' Application**

The Landlords withdrew their application as they regained possession of the unit on October 2, 2010.

I decline to award recovery of the filing fee because the application was withdrawn.

### **Tenants' Application**

Section 7(1) of the Act provides that if a landlord or tenant does not comply with this Act, the Regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for the damage or loss which results. That being said, section 7(2) also requires that the party making the claim for compensation for damage or loss which results from the other's non-compliance, must do whatever is reasonable to minimize the damage or loss.

The party applying for compensation has the burden to prove their claim and in order to prove their claim the applicant must provide sufficient evidence to establish the following:

1. That the Respondent violated the Act, Regulation, or tenancy agreement; and
2. The violation resulted in damage or loss to the Applicant; and
3. Verification of the actual amount required to compensate for loss or to rectify the damage; and
4. The Applicant did whatever was reasonable to minimize the damage or loss

The Tenants are seeking damages in the amount of \$2,300.00 (\$1,000.00 + \$100.00, + \$1,200.00) as they are of the position that they were forced to move out of the rental unit after a male threatened them. In the presence of opposing testimony from the Landlords, and in the absence of a police report I find the Tenants have provided insufficient evidence to support the Landlords violated the Act, Regulation or tenancy

agreement. The Tenants confirmed they did not speak with the Landlords in regards to this situation therefore limiting the Landlords ability to resolve the situation and avoiding the Tenants obligation to mitigate their loss. Based on the aforementioned I hereby dismiss the Tenants' claim.

The evidence supports that the Tenants ended the tenancy October 2, 2010 when they abandoned the rental unit, and did not provide the Landlord with a forwarding address until today's hearing.

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.

Therefore in the absence of any proof that a forwarding address in writing was given to the Landlords, it is my finding that, at the time that the Tenants applied for dispute resolution, the Landlords were under no obligation to return the security deposit and therefore this application is premature. I therefore dismiss this claim with leave to re-apply.

At the hearing the Tenants stated that the address they provided at the hearing is their present forwarding address; therefore the Landlords are now considered to have received the forwarding address as of October 15, 2010.

### Conclusion

The Tenants' application for damage or loss is HEREBY DISMISSED, without leave to reapply.

The Tenants' application for the return of their security deposit is HEREBY DISMISSED, with leave to reapply.

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: October 18, 2010.

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Dispute Resolution Officer