



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes MNDC FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Tenants to obtain a Monetary Order 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 Landlords for this application.

Service of the hearing documents, by the Tenant to the Landlords, were sent via registered mail on approximately September 10, 2010, to the service address provided by the Landlords on the 2 Month Notice to End Tenancy which was issued July 15, 2010. Mail receipt numbers were provided in the Tenants' evidence. The Landlords are deemed to be served the hearing documents on September 15, 2010, 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.

Issues(s) to be Decided

Are the Tenants entitled to a Monetary Order pursuant to section 67 of the *Residential Tenancy Act*?

Background and Evidence

The Tenants entered into a fixed term tenancy agreement which was effective December 15, 2009 and was set to switch to a month to month tenancy after December

14, 2010. Rent was payable on the first of each month in the amount of \$1,050.00 and the Tenants paid a security deposit of \$525.00 on December 15, 2009.

The Tenants testified that a fire broke out in the rental building and they were forced to vacate the unit on July 9, 2010. They were allowed back into the rental unit the next day to remove valuables such as wallets etc. and then a week later to remove the larger items that could be salvaged. They attended a strata meeting on July 17, 2010 where they were served the 2 Month Notice by the Landlords. They were advised during this meeting that it would take approximately 12 to 18 months to make the rental building liveable again. The Tenants stated that they are not seeking compensation for being issued the 2 Month Notice as they recognize that this notice was issued in error.

The Tenants advised that they received their full security deposit of \$525.00 on July 21, 2010. They provided the Landlord their new address in an e-mail on July 29, 2010 and have attempted on several occasions to obtain a refund for the 23 days they were not able to occupy the rental unit. They have calculated the amount to be \$793.97 (\$34.52 per day x 23 days).

Analysis

When considering a claim for damages I must determine if the claim is being brought forward for negligence on the part of the Landlord or if the claim is being brought forth as a claim for breach of contract.

In reviewing the evidence I find that there is no indication that the Landlords breached the care owed to them or that the loss claimed was a foreseeable result of such a breach. Therefore, I find there is insufficient evidence to support a claim of negligence on the part of the Landlords.

In considering a claim for breach of contract a landlord is expected to provide the premises as agreed to while a tenant is expected to pay rent. If the tenant does not pay

rent the landlord is entitled to damages. If, on the other hand, the tenant is deprived of the use of all or part of the premises through no fault of his or her own, the tenant may be entitled to damages, even where there has been no negligence on the part of the landlord.

In this case the evidence supports the Tenants paid rent for the full month of July and were prevented from occupying the rental unit from July 9, 2010 onward. Therefore, based on the above, I find the Tenants are entitled to a monetary claim for the return of the 23 days rent between July 9, 2010 and July 31, 2010 in the amount of \$793.97.

As the Tenants have been successful with their application, I hereby award recovery of the \$50.00 filing fee.

Conclusion

A copy of the Tenants' decision will be accompanied by a Monetary Order for **\$843.97** (\$793.97 + \$50.00). 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: October 27, 2010.

Dispute Resolution Officer