



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes MNSD, MNDC, FF

Introduction

This hearing dealt with the Tenants' Application for Dispute Resolution, seeking monetary compensation under the Act or tenancy agreement, to recover double the security deposit paid to the Landlord, and to recover the filing fee for the Application.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues(s) to be Decided

Are the Tenants entitled to return of double the security deposit?

Are the Tenants entitled to the return of one month of rent?

Background and Evidence

The Tenants first viewed the rental unit on July 2, 2010, however, they were unable to look at the cupboards as the unit was still being cleaned by the Landlord's Agents. As well, the Agents informed the Tenants that the bathroom still needed to be painted. The Tenants and the Landlord signed a six month term tenancy agreement on July 2, and the Tenants were to move in the next day, on July 3, 2010.

The Tenants began to move in their food items on July 3, and noticed mice feces in the cupboard. They reported this to the Landlord's Agent, who was still at the rental unit. The Agent told the Tenants it just needed another cleaning and the Tenants waited approximately 15 minutes for this.

The Tenants began to move in again and came across a sticky substance along the edges of the interior of the cupboards. They asked the Agent about this and were informed that the sticky substance was for cockroaches which had previously infested the cupboards.

The Agent for the Landlord testified that she offered to clean this up as well, although at this time the Tenants informed the Agent for the Landlord that they were not going to accept the rental unit. The Tenants told the Agent that they could rent the unit to someone else.

The next day or so, the Tenants called the Landlord's Agent to enquire about the address to send a letter requesting a refund of their security deposit and the first month of rent payment. The Agent informed the Landlord that the office may be moving and she was not sure of the address. The Tenants asked about returning the key to the rental unit and were informed to drop these off in the mailbox at the rental unit building.

One of the Tenants went to return the keys and wanted to take pictures of the rental unit, however, the Tenant could not access the rental unit as the locks had been changed.

The Tenants did a search for the Landlord's address at the corporate records office and sent a copy of their letter by registered mail to the Landlord's address. The Canada Post tracking information, supplied by the Landlord in evidence, indicates the Tenants sent this letter on July 6, 2010. There was an attempted delivery on July 8, 2010, and a delivery notice card was left. The Landlord did not attempt to retrieve this mail, although the Agent confirmed that this was the correct address during the course of the hearing.

On July 28 the Tenants filed their Application, and sent it by registered mail to the Landlord.

The Agent for the Landlord acknowledged receipt of the Tenants forwarding address and their Application for Dispute Resolution on July 30, 2010, and returned a cheque for \$450.00, the amount of the deposit, to the Tenants on July 30, 2010.

The Tenants acknowledged they had received the cheque for \$450.00, and testified they had cashed the cheque.

The Tenants have claimed for \$900.00, for the return of double the security deposit and for \$900.00, one month of rent, alleging the rental unit was unfit to move into.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find the Landlord has breached section 38 of the Act by failing to return the security deposit within 15 days of receipt of the Tenants' forwarding address, and has breached section 32 of the Act by failing to provide a rental unit suitable for occupation by the Tenants.

Under section 38 of the Act, the Landlord had to either return the security deposit or file an Application to keep the security deposit within 15 days of the receipt of the Tenants

forwarding address. I find the Tenants sent the Landlord their forwarding address by registered mail on July 6, 2010. Under the Act, registered mail is deemed served five days after mailing. Refusal to accept or failure to claim registered mail is not a ground for review under the Act. I find the Landlord was deemed served with the forwarding address on July 11, 2010. Therefore, the Landlord had until July 26, to either return the security deposit or begin the Application. The Landlord did neither and therefore breached section 38 of the Act.

I further find that, due to the mice feces and cockroach treatment residue, the rental unit was not ready to be occupied by the Tenants and therefore, the Landlord breached section 32 of the Act.

Section 67 of the Residential Tenancy Act states:

Without limiting the general authority in section 62(3) [*director's authority*], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

I find the breaches of the Act by the Landlord have caused the Tenants to suffer a loss.

I find that the Tenants have established a total monetary claim of **\$1,400.00**, comprised of \$900.00 for the return of one month of rent, \$900.00 for double their security deposit, the \$50.00 fee paid by the Tenants for this application, **less the \$450.00** already paid to the Tenants.

I grant the Tenants an order under section 67 for the balance due of \$1,400.00. This order may be filed in the Provincial Court (Small Claims) and enforced 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: December 20, 2010.

Dispute Resolution Officer