

DECISION

Dispute Codes MND, MNSD, MNDC, FF

Introduction

This hearing dealt with applications from the landlord and the tenants pursuant to the *Residential Tenancy Act* (the *Act*). The landlord applied for:

- a monetary order for damage to the rental unit, and for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested, pursuant to section 38; and
- authorization to recover his filing fee for this application from the tenant pursuant to section 72.

The tenants applied for:

- authorization to obtain a return of all or a portion of their security deposit pursuant to section 38;
- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67; and
- for authorization to recover their filing fee for their application from the landlord pursuant to section 72.

The landlord did not attend the hearing. The tenants attended the hearing and were given a full opportunity to be heard, to present evidence and to make submissions. The tenants submitted written evidence of their serving of the landlord with their dispute resolution hearing package by registered mail on September 30, 2010. They provided Canada Post Tracking Numbers to confirm this mailing. I am satisfied that the tenants served these documents to the landlord in accordance with the *Act*.

Rule 10.1 of the Rules of Procedure provides as follows:

10.1 Commencement of the dispute resolution proceeding The dispute resolution proceeding must commence at the scheduled time unless otherwise decided by the Dispute Resolution Officer. The Dispute Resolution Officer may conduct the dispute resolution proceeding in the absence of a party and may make a decision or dismiss the application, with or without leave to re-apply.

In the absence of any evidence or submissions from the landlord, I order the landlord's application dismissed without liberty to reapply.

Issues(s) to be Decided

Are the tenants entitled to a monetary award for loss arising out of this tenancy? Are the tenants entitled to obtain a return of their security deposit? Are the tenants entitled to recover their filing fees for their application from the landlord?

Background and Evidence

The tenants moved into the rental unit on May 5, 2010. They vacated the rental unit on this month-to-month tenancy by July 1, 2010. They made two rent payments of \$900.00 for May and June 2010. The landlord continues to hold their \$300.00 security deposit, paid on or about April 25, 2010.

The tenants testified that they provided written notice of their forwarding address to the landlord on July 8, 2010. In his July 29, 2010 application for dispute resolution, the landlord stated that he received the tenant's forwarding address on July 22, 2010. The tenants asked for the return of their security deposit.

The tenants also requested a monetary award equivalent to one month's rent of \$900.00 to compensate them for their loss of quiet enjoyment during their tenancy and for the landlord's failure to provide them with the facilities he committed to provide.

Analysis

I find that the tenants are entitled to obtain a return of their \$300.00 security deposit plus interest from the landlord. No interest is payable over this period.

Based on the undisputed evidence of the tenants, I am satisfied that the tenants suffered a loss of quiet enjoyment of the rental premises during their tenancy. The tenants testified that smoking in the rental unit caused problems for the female tenant's

asthma and that the rental premises were noisy. I allow the tenants a monetary award of \$100.00 to compensate them for their loss of quiet enjoyment during this tenancy.

Since the tenants have been successful in their application, I allow them to recover their filing fee from the landlord.

Conclusion

As noted above, I dismiss the landlord's application without leave to reapply.

I issue a monetary Order in the tenants' favour in the following terms:

Item	Amount
Return of Security Deposit	\$300.00
Loss of Quiet Enjoyment During Tenancy	100.00
Recovery of Filing Fee for this application	50.00
Total Monetary Order	\$450.00

This monetary Order allows the tenants to recover their security deposit, their filing fee for their application, and provides for their loss of quiet enjoyment during this tenancy.

The tenants are provided with these Orders in the above terms and the landlord must be served with a copy of these Orders as soon as possible. Should the landlord fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders 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*.