

DECISION

Dispute Codes MNR, MNSD, MNDC, FF

Introduction

This hearing dealt with cross Applications for Dispute Resolution. Both parties sought monetary orders against the other party.

The hearing was conducted via teleconference and was attended by the landlord's agent and both tenants.

The landlord's agent confirmed at the outset of the hearing that the landlord had received the tenants' evidence and that the landlord provided no evidence to the respondent tenants or to the Residential Tenancy Branch.

Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to a monetary order for liquidated damages; for all or part of the security deposit and to recover the filing fee from the tenants for the cost of the Application for Dispute Resolution, pursuant to Sections 38, 45, 67, and 72 of the *Residential Tenancy Act (Act)*.

In addition, it must be decided if the tenants are entitled to a monetary order for the return of double the amount of the security deposit and to recover the filing fee from the landlord for the cost of the Application for Dispute Resolution, pursuant to Sections 38, 45, 67, and 72 of the *Act*.

Background and Evidence

The tenants submitted into evidence a copy of a tenancy agreement signed by the parties on May 10, 2010 for a 1 year fixed term tenancy beginning on May 15, 2010 for the monthly rent amount of \$1,550.00 due on the 1st of each month and a security deposit of \$775.00 was paid.

The tenancy agreement also contained the following clause: "...if the Tenant terminates the tenancy before the end of the original term, the Landlord may, at the Landlord's option, treat this Tenancy Agreement at an end and in such event, the sum of \$775.00 shall be paid by the Tenant to the Landlord as liquidated damages and not as a penalty."

The landlord seeks liquidated damages in the amount of \$775.00 and to retain the security deposit in satisfaction of that claim. The landlord's agent provided no explanation as to how the landlord determined the amount of \$775.00 to be a genuine pre-estimate of the loss suffered by the landlord as a result of the tenants ending the tenancy.

The tenants provided documentary and testimonial evidence that upon move in to the rental unit the landlord failed to complete a move in inspection. They also noted that the landlord's agent did walk through the unit with the tenants after the tenancy began and agreed verbally to correct some deficiencies but that there was no follow up.

They also note that they were later informed that there was a new agent for the landlord so they began the process again and did a walk through with the new agent. The tenants contend that the agent indicated that there didn't seem to be anything requiring correction.

The tenants then provided a written letter, dated July 14, 2010 both to the agent and directly to the landlord's headquarters requesting the deficiencies be repaired in accordance with Clause 11 of the tenancy agreement and asked for it to be completed within a two week period.

After this letter was sent to the landlords the tenants raised additional issues, including a noise complaint regarding tenants above these tenants and problems with the parking garage door. The tenants received no response from the landlord or their agent in regards to any of the deficiencies by August 23, 2010 and felt the landlord had been uncooperative regarding the additional complaints.

As a result the tenants felt they were justified to end the tenancy as the landlord had breached, in particular, Clause 11 of the tenancy agreement. The landlord's agent provided no testimony to explain how the landlord responded to the tenant's requests or letters of complaint.

In their notice to end the tenancy the tenants identified that they would be vacating the rental unit on September 30, 2010 and they provided their forwarding address and requested the landlord return the security deposit by October 15, 2010. The landlord did not return the tenant's security deposit but did submit an Application for Dispute Resolution on October 20, 2010 claiming against the security deposit.

The landlord's agent indicated that she did not conduct a move out inspection with the tenants because she was never made aware they were moving out. She could provide no testimony as to why her headquarters office failed to advise her after receiving the tenants' notice. The landlord's agent provided no explanation as to why the landlord did not submit an Application for Dispute Resolution to claim against the security deposit until October 20, 2010.

Analysis

Section 45(2) of the *Act* states a tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that, among other things, is not earlier than the date specified in the tenancy agreement as the end of the tenancy.

Section 45(3) states that if a landlord has failed to comply with a material term of the tenancy agreement and has not corrected the situation within a reasonable period after the tenant gives written notice of the failure, the tenant may end the tenancy effective on a date that is after the date the landlord receives the notice.

I accept that the tenants had identified items to be repaired that required the landlord's attention both to meet their obligations under Clause 11 of the tenancy agreement and Section 32 of the *Act* that requires the landlord to provide and maintain a residential property in a state of decoration and repair that make it suitable for occupation by a tenant.

I also accept the tenants provided the landlord with several opportunities to conduct inspections of the rental unit; provide a response and/or begin and make repairs to the rental unit's deficiencies and that the landlord failed to do so. I find the tenants gave the landlord an adequate and reasonable time to respond and that they made their requests in writing.

As such, I find the tenants were justified and compliant with Section 45 of the *Act* in ending the tenancy. As I have found that the tenants were justified, based on the landlords' actions and inactions, in ending the tenancy I find that the landlord is not entitled to benefit from the inactions by enforcing their liquidated damages clause. I therefore dismiss the landlord's application in its entirety.

Section 38(1) of the *Act* requires a landlord to return a security deposit to the tenants or file an Application for Dispute Resolution to claim against the security deposit within 15 days of the end of the tenancy and receipt of the tenants forwarding address.

I accept that the tenants provided the landlord with their forwarding address prior to the end of the tenancy and as such, the landlord had until October 15, 2010 to either return the security deposit or file an Application for Dispute Resolution. As the landlord failed to do complete either of these within 15 days, I find the landlord failed to comply with Section 38(1).

Section 38(6) states that should the landlord fail to comply with Section 38(1) the landlord must pay the tenants double the amount of the security deposit.

Conclusion

I find that the tenants are entitled to monetary compensation pursuant to Section 67 and I grant a monetary order in the amount of **\$1,600.00** comprised of \$1,550.00 double the amount of the security deposit and the \$50.00 fee paid by the tenants for this application.

This order must be served on the landlord and 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: February 24, 2011.

Residential Tenancy Branch