



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes MNSD FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Tenant for a Monetary Order for the return of double her security deposit 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, was done in accordance with section 89 of the *Act*, sent via registered mail. The Landlords confirmed receipt of the Notice of Dispute Resolution.

Both the Landlords and the Tenant appeared at the teleconference hearing, gave affirmed testimony, were provided the opportunity to present their evidence orally, in writing, and in documentary form.

Issues(s) to be Decided

1. Has the Landlord breached the *Residential Tenancy Act*, regulation or tenancy agreement?
2. If so, has the Tenant met the burden of proof to obtain a Monetary Order as a result of that breach?

Background and Evidence

At the outset of the hearing the Landlords confirmed they received the registered letter from the Tenant but that it did not contain copies of the Tenant's evidence. They stated it only contained two copies of the notice of dispute resolution letter.

The Tenant provided opposing testimony that she provided the Landlords copies of all of the same documents she provided the Tenancy Branch as this is what she was instructed to.

The Tenant testified she entered into a written month to month tenancy agreement which began on August 1, 2009 and ended on September 30, 2010. Rent was payable on the first of each month in the amount of \$550.00 and a security deposit of \$550.00 was paid on August 1, 2009. She stated she had rented a basement suite with access to only one of the two bedrooms. When she arrived at the unit August 1, 2009 the Landlords were still occupying the full unit and she had to wait until later that afternoon.

The Landlords had possessions in the other bedroom and they would access the rental unit, without notice as they had a key. She would leave her rent payment in an envelope in the cutlery drawer for the Landlords to pick up when they came to the unit.

The Landlords were out of the country when she attempted to give them notice to end her tenancy so she left her written notice with the tenant upstairs on September 10, 2010. This notice contained her forwarding address. She stated the Landlords were always at the rental unit speaking to the upper tenant so she knew they would get her notice that way.

She was never given the Landlords' address so when her forwarding address changed she delivered a letter on October 4, 2010 to the upper tenants at the rental property which included her new address. She noted that this rental address is the address that she sent her notice of dispute resolution to. She had called the male Landlord on several occasions to get her security deposit returned. The Last time she called was October 4, 2010 at 10:44 a.m.

The female Landlord began her testimony by stating they did not collect \$550.00 as a security deposit and they only took a deposit of \$275.00. I asked the female Landlord why she signed the tenancy agreement which clearly states she took a security deposit of \$550.00 on August 1, 2009. She replied that \$275.00 was a deposit for furniture and when I asked why that was not written in the agreement she confirmed \$550.00 was for a security deposit.

The Landlords confirmed they have not returned the security deposit to the tenant and have not made application for dispute resolution to keep the security deposit, they do not have an Order granting them the authority to keep the security deposit and they do not have the Tenant's written permission to keep the security deposit.

The Landlords stated they were going out of the country on August 27, 2010, so they made arrangements to pick up the Tenant's September 1, 2010 rent on August 25, 2010. The male Landlord returned on September 27, 2010 and when he attended the rental unit September 30, 2010 he found the Tenant had already moved out and was

cleaning the unit. They stated they did not know the Tenant was moving out and argued that the Tenant has always known their address. They confirmed the keys were returned to them September 30, 2010.

They stated they did not return the security deposit because the Tenant did not provide them with proper notice to end her tenancy. When asked when the unit was re-rented the female Landlord stated they could not re-rent the unit. Later in her testimony she stated they did not make an effort to re-rent the unit because they were discouraged by this Tenant's failure to give proper notice to end the tenancy. Then near the end of the hearing the female Landlord stated they had re-rented the unit as of March 1, 2011. I then requested clarification on the contradictory testimony provided by the Landlord; however she was not able to provide testimony as to how or if they advertised the unit for rent.

When I requested the Landlords' address to mail my decision to, the female Landlord replied "she has always known our address". I repeated my request for the Landlords' mailing address when she replied with the address listed on the front of this decision.

I asked the Tenant to confirm her mailing address to which she replied with her current address which is also listed on the front page of this decision.

Analysis

All of the testimony and documentary evidence was carefully considered which included, among other things, copies of letters sent to the Landlords from the Tenant on September 10, 2010 and October 4, 2010, and a copy of the tenancy agreement.

I find that in order to justify payment of loss under section 67 of the *Act*, the Applicant Tenant would be required to prove that the other party did not comply with the *Act* and that this non-compliance resulted in losses to the Applicant pursuant to section 7. It is important to note that in a claim for damage or loss under the *Act*, the party claiming the damage or loss; in this case the Tenant bears the burden of proof.

A significant factor in my considerations is the credibility of the Landlords' testimony. I am required to consider the Landlords' evidence not on the basis of whether their testimony "carried the conviction of the truth", but rather to assess their evidence against its consistency with the probabilities that surround the preponderance of the conditions before me. I find that the female Landlord contradicted her own testimony during the hearing pertaining to the amount of security deposit taken and in response to my questions about when and if the unit was re-rented.

After careful consideration of the testimony I accept, on a balance of probabilities, that the Tenant sent copies of all of her evidence to the Landlords via registered mail with her application for dispute resolution.

After careful review of the tenancy agreement and the application for rental I note the Landlords' address for service and the telephone number of the landlord or their agent is not listed on the tenancy agreement in breach of section 13(2)(e) of the Act. I further note that the Landlords failed to provide the Tenant with an emergency contact name, address, and telephone number, when they left the country on August 27, 2010 in breach of section 33(2) of the Act. That being said, I accept that the Tenant provided notice to end her tenancy to the only remaining person she knew whom the Landlords would contact upon their return and that was the upper tenant.

The evidence supports the Tenant provided her forwarding address in writing on September 10, 2010 and then again on October 4, 2010 when her forwarding address changed.

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. In this case the Landlords were required to return the Tenant's security deposit in full or file for dispute resolution no later than October 15, 2010, if based on the tenancy ending September 30, 2010, or October 19, 2010 if based on the latest notice of forwarding address. The Landlords have made no application for dispute resolution.

Based on the above, I find that the Landlords have failed to comply with Section 38(1) of the *Act* and that the Landlords are now subject to Section 38(6) of the *Act* which states that if a landlord fails to comply with section 38(1) the landlord may not make a claim against the security deposit and the landlord must pay the tenant double the security deposit. I find that the Tenant has succeeded in proving the test for damage or loss as listed above and I approve her claim for the return of double the security deposit of **\$1,100.00** plus interest of \$0.00.

The Tenant has succeeded with her application therefore I award recovery of the **\$50.00** filing fee.

Conclusion

A copy of the Tenant's decision will be accompanied by a Monetary Order for **\$1,150.00** (\$1,100.00 + \$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: February 22, 2011.

Residential Tenancy Branch