



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes MNSD RPP FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Tenants for a Monetary Order for the return of double their security deposit, for the return of their personal property, and to recover the cost of the filing fee from the Landlord for this application.

Service of the hearing documents, by the Tenants to the Landlord, was done in accordance with section 89 of the *Act*, sent via registered mail on February 24, 2011. The Canada Post tracking number was provided in the Tenant's testimony. The Landlord is deemed served the hearing documents on March 1, 2011, five days after they were mailed in accordance with section 90 of the *Act*.

The Tenant appeared at the teleconference hearing, gave affirmed testimony, was provided the opportunity to present their evidence orally, in writing, and in documentary form. No one appeared on behalf of the Landlord despite him being served notice of today's hearing in accordance with the *Act*.

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?

3. Are the Tenants entitled to the return of their personal property?

Background and Evidence

The Tenant testified they entered into a written month to month tenancy agreement effective January 1, 2010. Rent was payable on the first of each month in the amount of \$800.00 and on December 10, 2009 they paid the Landlord \$400.00 as the security deposit.

On January 1, 2011, they provided the Landlord notice to end their tenancy, effective January 31, 2011. They paid the Landlord the full month's rent for January 2011 and vacated the unit by January 2, 2011 removing all of their possessions except for a suitcase full of tools. The tools were left in the unit as the Tenants were returning to finish up some work. When they attended the unit on approximately January 15, 2011 their suitcase and tools were gone.

They found out the Landlord allowed new tenants to move into the unit on January 23, 2011, even though they were still entitled to possession of the unit until January 31, 2011. They called the police who instructed them to contact the *Residential Tenancy Branch*.

After contacting the *Residential Tenancy Branch* they were instructed to send a letter to the Landlord with their forwarding address. They sent the Landlord a letter registered mail on January 24, 2011, requesting the return of their deposit and tools and it included their forwarding address. The Tenant provided the tracking information in her testimony. The Landlord now refuses to pick up the phone when they call.

Analysis

Given the evidence before me, in the absence of any evidence from the Landlord who did not appear despite being properly served with notice of this proceeding, I accept the version of events as discussed by the Tenant.

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.

The evidence supports that the Tenants ended the tenancy effective January 31, 2011 and provided the Landlord with their forwarding address in writing on January 24, 2011. The Landlord is deemed to have received the forwarding address on January 29, 2011.

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 Landlord was required to return the Tenants' security deposit in full or file for dispute resolution no later than February 15, 2011. The Landlord did neither.

Based on the above, I find that the Landlord has failed to comply with Section 38(1) of the *Act* and that the Landlord is 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 and pet deposit and the landlord must pay the tenant double the security deposit.

Based on the aforementioned, I find that the Tenants have succeeded in proving the test for damage or loss as listed above and I approve their claim for the return of double their security deposit plus interest of **\$800.00** (2 x \$400.00 plus \$0.00 of interest).

The Tenants ended their tenancy effective January 31, 2011 and paid the full month's rent for January 2011. They were entitled to possess the unit until January 31, 2011 and to leave their possessions in the unit. I accept the testimony before me that their suite case full of tools was removed from the unit. Therefore I HEREBY ORDER the Landlord to return the Tenants' possessions immediately upon receipt of this decision. The Tenants will be at liberty to seek monetary compensation if the Landlord fails to comply with my Order and return their possessions.

The Tenants have succeeded with their application; therefore I award recovery of the \$50.00 filing fee.

Conclusion

A copy of the Tenants' decision will be accompanied by a Monetary Order for **\$850.00** (\$400.00 + \$50.00). The order must be served on the respondent Landlord and is enforceable through the Provincial Court as an order of that Court.

I HEREBY ORDER the Landlord to return the Tenants' possessions, immediately upon receipt of this decision.

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: March 16, 2011.

Residential Tenancy Branch