



Dispute Resolution Services

Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes MNDC, MNSD, MNR, MNSD, FF

Introduction

This hearing dealt with an application by the tenants for an order for the return of double their security deposit and a cross-application by the landlords for a monetary order and an order authorizing them to retain the security deposit in partial satisfaction of their claim. Both parties participated in the conference call hearing.

Issues to be Decided

Are the tenants entitled to an order for the return of double their security deposit?
Are the landlords entitled to a monetary order as claimed?

Background and Evidence

The parties agreed that the tenancy was set to begin on November 1, 2010, that rent was set at \$800.00 per month and that the tenants paid a \$400.00 security deposit. The female tenant viewed the rental unit and filled out an application and when it was accepted by the landlord, on or about October 20, the landlords attended at the tenants' home to sign the tenancy agreement. Both tenants signed the agreement despite the male tenant never having seen the rental unit.

The tenants testified that on October 26, the landlords gave them the key to the rental unit and when they inspected it, they were unsatisfied with its condition. They claim to have advised the landlord via telephone on the same day that they would not be continuing the tenancy. The tenants testified that on October 29 they wrote their forwarding address in a letter which they included with the key to the rental unit and put in the mailbox at the landlords' address for service.

The landlords agreed that they gave the tenants the key to the unit on or about October 26 but testified that they did not discover that the tenants did not intend to move into the rental unit until approximately November 1 when the tenants telephoned them. The landlords stated that they did not receive the tenants' forwarding address and the key

for the unit until March 29, 2011 when they looked in the mailbox. The landlords stated that they receive mail in a locked box and that the mailbox attached to their residence is merely decorative. They claim that while they usually check the decorative mailbox every few weeks, they did not discover the letter until late March. The landlords repeatedly asserted that the tenants have no proof that they served the forwarding address in October because they did not serve the landlords via registered mail. The landlords testified that because the tenants did not honour the tenancy agreement, the rental unit remained empty until December 1 despite the landlords having advertised the unit as being available. The tenants claim that they did not see any advertisements for the rental unit until mid-November.

Analysis

First addressing the tenants' claim, Section 38(1) of the Act provides that the landlords must return the security deposit or apply for dispute resolution within 15 days after the later of the end of the tenancy and the date the forwarding address is received in writing. I find that the tenancy had ended by November 1, 2010 at the very latest. Section 88(f) of the Act permits parties to serve certain documents, including a forwarding address, by leaving the copy in a mailbox at the address at which the party resides. Although the landlords deny having received the forwarding address prior to March 29, I prefer the evidence of the tenants for several reasons. First, in their written submissions the landlords claimed that they checked the decorative mailbox every week but in their oral testimony they said they checked it every few weeks. The landlords accused the tenants of "hiding" the letter in the mailbox and repeatedly emphasized their belief that service was not effective unless registered mail was used. The tenants were consistent in their positions and testimony and in their application for dispute resolution, specifically wrote that they had served the forwarding address in October. It was of no benefit to the tenants to delay serving their forwarding address for almost 5 months. I find that the tenants properly served the landlords with their forwarding address by leaving it in the mailbox on October 29. I do not accept the landlords' claim that the forwarding address was not discovered until March 29.

The landlords were required under the Act to either file an application for dispute resolution or return the deposit in full no later than November 16 and I find that they failed to do so. I find that they are therefore liable under section 38(6) which provides that the landlords must pay the tenants double the amount of the security deposit. I award the tenants \$800.00.

Turning to the landlords' claim, the landlords seek to recover lost income for the month of November. The tenants claimed that the rental unit was unsuitable for occupancy but

provided no evidence to show that the unit could not have been occupied. I am unable to find that the tenancy was frustrated. If the tenants were of the opinion that the landlord had breached a material term of the tenancy agreement, they were required under section 45(3) to give the landlords written notice and give the landlords a reasonable period of time in which to correct the breach. I find that the tenants have not proven that they had reason to end the tenancy without giving one full month's notice. I find that the landlords acted reasonably to minimize their losses and I award the landlords \$800.00 in lost income for November 2010.

Conclusion

The parties are each awarded \$800.00. I find that the parties should each bear their own filing fees. As the parties have each been awarded the same amount, it is appropriate for the landlord to retain the security deposit and no monetary award to be issued.

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: April 20, 2011

Residential Tenancy Branch