



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDC, FF

Introduction

This conference call hearing was convened in response to two applications for dispute resolution as follows:

By the tenants: as an application for a Monetary Order for the return of all or part of the security deposit; and to recover the filing fee associated with this application.

By the landlord: as a cross application for a Monetary Order for money owed or compensation for damage or loss under the Act, Regulation or tenancy agreement, to keep all or part of the security deposit; and to recover the filing fee associated with her application.

Both parties attended the hearing and provided affirmed testimony. They were given a full opportunity to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Is the landlord entitled to a Monetary Order, and if so for what amount?

Is the landlord entitled to keep all or part of the security deposit?

Is the landlord entitled to recover the filing fee?

Is the tenant entitled to a Monetary Order, and for what amount?

Is the tenant entitled to the return of all or part of the security deposit?

Is the tenant entitled to recover the filing fee?

Background and Evidence

The rental unit consists of a basement suite. Pursuant to a written agreement, the month to month tenancy started on June 1st, 2010. The rent was \$950.00 per month and the tenants paid a security deposit of \$500.00.

To summarize her evidence, the landlord testified that she felt that the tenants abused their privileges by allowing family members to visit and stay overnight. She could not provide details on these visits, but stated that they made her feel uncomfortable because she did not know who they were. She said that strangers wondering around the property scared her, that she felt outnumbered to the point of losing sleep. She said that the tenants used an excessive amount of power and utilities, and that they did not use the alarm system according to the agreement.

The landlord made a monetary claim as follows:

- Anguish: \$4000.00
- Additional utilities: \$ 104.64
- Lodging for family: \$ 100.00
- Filing fee: \$ 50.00
- Total: \$4,254.64

Tenant J.M. testified that she is 73 years old, and her husband is 78. She testified that the family members were mostly her daughter who suffered from crone's disease, and her grandchildren. She stated that she was not aware that she had to report family members visiting their grandparents to the landlord, and summarized the landlord's demands as excessive. She said that rent was originally set at \$875.00 for single occupancy, and that the landlord increased the rent by \$75.00 per month for the increased usage of power and utilities.

In their documentary evidence, the tenants provided a copy of the ad showing that the rental unit was originally advertised for \$875.00 per month, and that they paid \$950.00

to cover the extra usage of power. The tenant took offense at the landlord's claims and accusations, and there was an apparent tone of animosity between the parties during the proceedings.

The landlord replied that there was a verbal agreement concerning additional payment for the use of power, and that she did not take issue with the current increase of power usage based on the equal payment plan. She reiterated that she could not bear the tenants' use of the facilities, and that they could not reach a resolution to their disagreements.

Analysis

Concerning the tenants' application; Section 38(1) of the *Residential Tenancy Act* provides that the landlord 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 landlord received the tenant's forwarding address in writing.

Section 38(6) of the *Residential Tenancy Act* provides in part that if a landlord does not comply with his statutory obligation to return the security deposit within 15 days, the landlord must pay the tenant double the amount of the deposit.

If the landlord felt that she had grounds to keep a portion of the security deposit, she was obliged to make an application for dispute resolution within the time frame allowed by statute. The landlord stated that she received the tenants' forwarding address on either February 3rd or 4th, 2011, and she was obliged to deal with the security deposit by no later than February 19th. As the landlord did not comply with the Act, the tenants are entitled to the return of double the amount of the security deposit, less the amount already returned by the landlord.

Turning to the landlord's claim; the landlord kept \$268.20 from the security deposit for excessive usage of utilities. This portion of the claim has been addressed under the

tenants' application. The landlord had no entitlement to keep any portion of the security deposit without making an application for dispute resolution on time and I dismiss this portion of the landlord's claim.

Concerning the \$100.00 claim for additional tenants, Section 30 of the Act states in part that a landlord must not unreasonably restrict access to a person permitted on the residential property by the tenant. The landlord provided no evidence to prove that the tenants' visitations by family members were excessive, or to establish that the tenants' guests became occupants. Therefore I dismiss this portion of the landlord's claim.

The landlord made a claim for anguish and lack of sleep caused by the tenants' activities. This claim constitutes a loss of quiet enjoyment. Section 6 of the *Residential Tenancy Policy Guidelines* specifies that in connection with the landlord-tenant relationship, the covenant of quiet enjoyment protects the tenant; however that covenant is not reciprocated to the landlord. A course of action available to the landlord would be to seek assistance with the Branch or to file for dispute resolution. Section 7(2) of the *Act* states in part that a landlord who claims for compensation for damage must do whatever is reasonable to minimize the damage or loss. In this case the landlord chose to end the tenancy by serving the tenants with a Notice to End Tenancy. I found no evidence that the tenants breached the Act; the landlord's evidence in that regard was vague and non-specific. I find no legal basis to grant an award on this retroactive claim and I dismiss this portion of the landlord's claim.

Conclusion

The landlord's claim is dismissed in its entirety.

The tenants are entitled to double the security deposit (\$1000.00), less the amount returned by the landlord (\$231.80) for a balance owing of \$768.20. Since they were successful, the tenants are entitled to recover the \$50.00 filing fee.

Pursuant to Section 67 of the Act, I grant the tenants a monetary order for \$818.20. This Order may be registered in the Small Claims Court 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: June 08, 2011.

Residential Tenancy Branch