



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the Tenants: MNSD, FF

For the Landlords: MND, MNSD, MNR, MNDC, FF

Introduction

This hearing dealt with Cross Applications for Dispute Resolution.

The tenants applied for a monetary order to recover all or part of the security deposit and to recover the filing fee for the Application.

The landlords applied for an order to keep all or part of the security deposit and for a monetary order for damage to the rental unit, for unpaid rent, for money or compensation for damage or loss and to recover the filing fee for the Application.

The tenants and their witness appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in documentary form, and to make submissions to me.

Although served with the Application for Dispute Resolution and Notice of Hearing by registered mail on April 15, 2011, the landlords did not appear. The tenants provided testimony of a tracking number and testified that the mail was sent to the address at which the landlords carried on business as a landlord, their home address, and successfully demonstrated sufficient delivery of the documents under Section 89 of the Residential Tenancy Act (the "Act"). Thus the hearing proceeded in the landlords' absence.

Despite having their own Application for dispute resolution set for hearing on this date and time, the Application of the tenants and the Notice of these Hearings, the landlords did not appear.

Therefore, I dismiss the Application of the landlords, without leave to reapply.

Issue(s) to be Decided

Are the tenants entitled to a monetary order for a return of their security deposit, doubled, and to recover the filing fee?

Background and Evidence

The tenant testified that there is no written tenancy agreement; however, the tenant testified that this month to month tenancy started on April 13, 2008, ended on February 28, 2011, monthly rent was \$675.00 and the tenants paid a security deposit of \$340.00 on March 9, 2008.

The male tenant testified that he provided the landlords with the tenants' written forwarding address on March 21, 2011. The tenant further testified that he knocked on the landlords' door to deliver the written forwarding address on that date, and that the landlord would not answer the door. The tenant again knocked, with no answer at the door. However, the landlord opened his front window and told the tenants to get off his property.

After this incident from the landlord, the tenant placed the written forwarding address into the landlords' mailbox, which is just outside the front door.

The female tenant attended with the male tenant that day and testified that she witnessed these events and confirmed the tenant's testimony.

Analysis

Based on the above testimony and evidence, and on a balance of probabilities, I find as follows:

In order to justify payment of loss under section 67 of the *Act*, the applicant/tenants bear the burden 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.

The evidence and testimony supports that the tenants provided the landlord with their written forwarding address on March 21, 2011. I accept this testimony.

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. [Emphasis added]

The failure to comply with this section entitles the tenants to receive back double their security deposit.

The landlords did apply for dispute resolution to keep all or part of the security deposit, but the filing on June 20, 2011, was well past the allowed 15 days. The landlords do not have the tenants' written consent to retain the security deposit.

Based on the above, I find that the tenants have established a monetary claim as follows:

Security Deposit owed, doubled (2 x \$340.00)	\$680.00
Filing fee	\$50.00
TOTAL AMOUNT DUE TO THE TENANTS	\$733.66

Pursuant to section 67 of the Act, I grant the tenants a **monetary order** in the amount of **\$733.66**.

I am enclosing a monetary order for \$733.66 with the tenants' Decision. This order is a **legally binding, final order**, and it may be filed in the Provincial Court (Small Claims) should the landlords fail to comply with this monetary order.

Conclusion

The tenants are granted a monetary order for \$733.66.

The landlords' application is dismissed, without leave to reapply.

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: July 26, 2011.

Residential Tenancy Branch