



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the landlord – MNDC, MNSD, MND

For the tenant – MNSD, FF

Introduction

This hearing was convened by way of conference call in repose to both parties' applications for Dispute Resolution. The landlords' application is for a Monetary Order for damage to the unit, site or property; for an Order permitting the landlord to keep all or part of the tenants security deposit; for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement. The tenants' application is for the return of double their security deposit and to recover the filing fee from the landlords for the cost of this application.

The tenant and landlord attended the conference call hearing, gave sworn testimony and were given the opportunity to cross exam each other. The landlord stated he had not served the tenant with a copy of his application and Notice of hearing as he had not received confirmation or notice of Hearing for his application from the Residential Tenancy Branch. Consequently, as the tenants were not served with Notice of the landlords application and hearing the landlords application has not been dealt with at the hearing today and is dismissed with leave to reapply.

The tenants provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. All evidence and testimony of the parties has been reviewed and are considered in this decision.

Issue(s) to be Decided

- Are the tenants entitled to recover double their security deposit?

Background and Evidence

Both parties agree that this tenancy started on June 26, 2009. This tenancy started as a fixed term tenancy which reverted to a month to month tenancy at the end of the fixed term. Rent for this unit was \$1,600.00 per month and was due on the first day of each month in advance. The tenants paid a security deposit of \$800.00 on June 26, 2009.

The tenant attending testifies that they gave the landlord notice to move from the rental unit effective on September 01, 2011. The tenant states he gave the landlord their forwarding address by e-mail on two occasions but the landlord did not return their security deposit. The tenant states they then gave the landlord their forwarding address in writing and sent this by registered mail on October 11, 2011. To date the tenant states the landlord has still failed to return their security deposit. The tenant agrees he did inform the landlord that he may keep \$100.00 of their security deposit for carpet cleaning at the end of the tenancy.

The tenant states the landlord failed to conduct either a move in or a move out condition inspection of the unit at the start and end of the tenancy.

The tenant states he is aware now that the landlord must return double the amount of their security deposit to them; however the tenant states they only seek to recover the original deposit less the \$100.00 for carpet cleaning and they agree to waive their right to have the security deposit doubled.

The landlord agrees he did not carry out the inspections of the property with the tenants at the start or end of the tenancy. The landlord states he was unaware this would

extinguish the landlords' rights to apply to keep the security deposit. The landlord testifies that the tenants gave the landlords their forwarding address in writing when they moved from the rental unit on September 01, 2011.

Analysis

Section 38(1) of the *Act* says that a landlord has 15 days from the end of the tenancy agreement or from the date that the landlord receives the tenants forwarding address in writing to either return the security deposit to the tenant or to make a claim against it by applying for Dispute Resolution if the landlord is entitled to do so. If a landlord does not do either of these things and does not have the written consent of the tenant to keep all or part of the security deposit then pursuant to section 38(6)(b) of the *Act*, the landlord must pay double the amount of the security deposit to the tenant unless the tenant has specifically waived the doubling of the deposit.

Based on the above and the landlords own admissions I find that the landlord did receive the tenants forwarding address in writing on September 01, 2011 and again on October 11, 2011. As a result, the landlord had until September 16, 2011 to return the tenants security deposit. I further find the landlord did file an application to keep the security deposit but did not serve the tenants with a copy of this and I find the landlord extinguished his right to file a claim against the security deposit for damages as the landlord failed to carry out a move in or move out condition inspection with the tenants. Consequently, I find that the tenants have established a claim for the return of double the security deposit less the \$100.00 they agreed the landlord could retain for carpet cleaning to the sum of \$1,500.00.00 pursuant to section 38(6)(b) of the *Act*. However the tenants have waived the doubling of the security deposit at the hearing, therefore the tenants will receive a Monetary Order for the sum of **\$700.00** pursuant to s. 38 of the *Act*.

I also find the tenants are entitled to recover the **\$50.00** filing fee from the landlord pursuant to section 72(1) of the *Act*. The tenants are entitled to a Monetary Order of **\$750.00**.

Conclusion

I HEREBY FIND in favor of the tenants amended monetary claim. A copy of the tenants' decision will be accompanied by a Monetary Order for **\$750.00**. The order must be served on the respondent and is enforceable through the Provincial Court as an order of that Court.

The landlords' application is dismissed with leave to reapply for a Monetary Order for damage to the unit, site or property; and for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement. The landlords' application to keep the tenants security deposit 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: December 05, 2011.

Residential Tenancy Branch