



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR MNSD FF
 MNDC MNSD FF

Introduction

This hearing dealt with cross applications for Dispute Resolution filed by both the Landlord and the Tenant.

The Landlord filed seeking a Monetary Order for unpaid rent or utilities, to keep the security deposit, and to recover the cost of the filing fee from the Tenants for this application.

The Tenants filed seeking a Monetary Order for the return of their security deposit, for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, and to recover the cost of the filing fee from the Landlord for this application.

The Tenants appeared at the teleconference hearing, provided affirmed testimony, and were given the opportunity to present their evidence, in writing, and in documentary form. No one appeared on behalf of the Landlord despite this hearing being convened to hear his application for dispute resolution and despite him being served notice of the Tenants' application which was scheduled to be heard during the same hearing.

Issue(s) to be Decided

1. Have the Tenants met the burden of proof to be entitled to rent reduction for the loss of use of their bedroom during their tenancy?
2. Are the Tenants entitled to the return of their security deposit?

Background and Evidence

The Tenants affirmed that they entered into a written fixed term tenancy agreement that began on August 1, 2010 and was set to switch to a month to month tenancy after January 31, 2011. Rent was payable on the first of each month in the amount of \$700.00 and the Tenants paid \$350.00 on June 28, 2011 as the security deposit.

The Tenants advised that they had alerted the Landlord to a possible water leak in their bedroom on August 14, 2011, which caused damage to their mattress and bedroom furniture. They were required to move all of their possessions out of the bedroom into the living room and kitchen and were required to sleep in the living room while repairs were started on their bedroom. During the period of August 14, 2011 and August 25, 2011 the Landlord failed to provide them with proper communication about the status of the repairs and when they could expect to have the repairs completed. They had requested a reduction of rent by \$50.00 per month until the repairs were completed however the Landlord remained non-committable.

The Tenants stated that as time went on the Landlord became more evasive and failed to return their calls or communicate with them. So on August 26, 2011 they sent the Landlord a text message and delivered a letter to his office informing the Landlord that in the absence of information of when the repairs were expected to be completed they had no choice but to move out by the end of August 2011. The keys to the rental unit and their forwarding address were delivered to the Landlord's office on August 31, 2011. They are seeking \$400.00 which is comprised of their security deposit of \$350.00 plus \$50.00 for the loss of use of their bedroom from August 16, 2011 to August 31, 2011.

There was no evidence presented in support of the Landlord's application as no one was in attendance at the teleconference hearing on behalf of the Landlord.

Analysis

Landlord's application

Section 61 of the *Residential Tenancy Act* states that upon accepting an application for dispute resolution, the director must set the matter down for a hearing and that the Director must determine if the hearing is to be oral or in writing. In this case, the hearing was scheduled for an oral teleconference hearing. In the absence of the applicant Landlord, the telephone line remained open while the phone system was monitored for ten minutes and no one on behalf of the applicant Landlord called into the hearing during this time. Based on the aforementioned I find that the Landlord has failed to present the merits of his application and the application is hereby dismissed.

Tenant's application

Section 32 of the *Act* requires a landlord to maintain residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law, and having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

Section 27 stipulates that a landlord must not terminate or restrict a service or facility if that service or facility is essential to the tenant's use of the rental unit as living accommodation or providing the service or facility is a material term of the tenancy agreement.

In absence of disputed testimony from the Landlord, who did not appear at this teleconference hearing despite this hearing being scheduled to hear the Landlord's application for dispute resolution and the Tenants' application, I accept the version of events as provided by the Tenants. Accordingly I approve their claim for **\$50.00** as compensation for the loss of use of their bedroom from August 16, 2011 to August 31, 2011.

Having dismissed the Landlord's application above, the Landlord has not proven entitlement to retain the Tenant's security deposit. Therefore I award the Tenants the return of the security deposit plus interest of \$0.00 for the total amount of **\$350.00**.

The Tenants have been successful with their application; therefore I award them recovery of their **\$50.00** filing fee.

Conclusion

I HEREBY DISMISS the Landlord's application.

The Tenants' application will be accompanied by a Monetary Order in the amount of **\$450.00** (\$50.00 + \$350.00 + \$50.00). This Order is legally binding and must be served upon the Landlord.

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: November 30, 2011.

Residential Tenancy Branch