



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MNSD

Introduction

This hearing was convened in response to an application by the Tenants pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. An Order for return of the security deposit - Section 38; and
2. A Monetary Order for compensation for damage or loss – Section 67.

The Tenants and Landlord were each given full opportunity to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Are the Tenants entitled to the monetary amounts claimed?

Background and Evidence

The tenancy began on October 1, 2011 and ended on November 30, 2011. Rent of \$700.00 was payable monthly on the first day of each month. At the outset of the tenancy, the Landlord collected a security deposit from the Tenants in the amount of \$350.00. The Tenant states that on move-in, the Landlord had given the Tenants a move-in inspection report form and advised the Tenants that a third party would attend the unit to complete the inspection with the Tenants. The Tenant states that this was never done. The Landlord states that she is sure a move-in inspection was done.

The Tenant states a notice to end tenancy was provided to the Landlord in writing on October 31, 2011 and was delivered by the Tenants to the Landlord’s office. The Landlord denies receiving this notice. The Parties agree that the Tenants provided their forwarding address in writing on December 15, 2011.

The Landlord submits that upon discovering that the Tenants left the unit, the Landlord assumed that the Tenants had forfeited their security deposit. The Landlord has not made an application to claim against the security deposit and has not returned the security deposit. The Tenant stated at the hearing that return of double the security deposit was not being waived.

The Tenant states that due to noise from the numerous upper tenants partying constantly during the night and into the early morning hours, safety concerns arising from a man staying in the upper unit kicking in the upper unit's door, and the Landlord's inaction, they had no choice but to end the tenancy. The Tenant provided a written account, dated December 19, 2100, of the disturbances by the upper tenant. The Tenant states that the Landlord was given several written complaints about the problems but that the problems did not stop. The Tenant states that the Tenant verbally told the Landlord on more than one occasion prior to the end of October 2011, that the Tenants would have to break the lease due to their concerns and were moving out of the unit. The Tenant argues that the Landlord should have attended the unit in person or called the police to stop the noise that occurred when the upper tenants partied.

The Tenant states that the water in the kitchen was not working and did not run for a period of time. The Tenant states that they were very concerned about ending the tenancy before the end of the fixed term and having to pay the landlord \$700.00 but that the situation became so bad that the Tenants had no choice but to end the tenancy and move out. The Tenants claim \$500.00 in compensation for having to relocate their residence and claim this amount to represent such costs as moving fees paid to persons and other relocation costs, such as utility and other connection costs.

The Landlord states that as she could not verify the Tenants' complaints about the upper tenants, the Tenant was asked to provide the complaints in writing and that the Tenant was very diligent about providing occurrence times and dates to the Landlord. The Landlord states that the upper tenants' unit was attended by the Landlord on several occasions during the day to follow-up on the complaints and that a written

warning about the noise and number of occupants was given to the upper tenants on October 14, 2011. The Landlord states that the upper tenant apologized. The Landlord states that the upper tenant's husband was volatile, was not on the lease but was at the unit and that as of October 24, 2011, this person had left the upper unit. The Landlord states that the police informed her that unless the Landlord were at the unit while reporting the disturbance, the police would only respond to the Tenant's complaint. The Landlord states that no attendance was made to the upper Tenant's unit when the Tenant complained about the night time partying as the Landlord would not put herself in danger. The Landlord submitted a written response to the claim, dated February 21, 2012 in which the Landlord states that the Tenants were told that "if they chose to move I would allow it with the proper notice."

The Landlord states that the problems with the Tenants running water was addressed by herself and that it was discovered that the City was responsible for a period of time that the water did not run. The Landlord states that the Tenant did have a problem with a low water pressure but that the plumber sent to the unit did not find anyone home when attending on three occasions and that the Landlord did not have any way to contact the Tenant to arrange a suitable time.

Analysis

Section 38 of the Act provides that within 15 days after the later of the date the tenancy ends, and the date the landlord receives the tenant's forwarding address in writing, the landlord must repay the security deposit or make an application for dispute resolution claiming against the security deposit. Where a Landlord fails to comply with this section, the landlord must pay the tenant double the amount of the security deposit. As the Landlord failed to make an application for dispute resolution claiming against the security deposit, and failed to return the security deposit within 15 days of receipt of the Tenant's forwarding address, I find that the Landlord is required to pay the Tenants double the security deposit in the amount of **\$700.00**.

Section 32 of the Act provides that the landlord has an obligation to reasonably provide repairs and maintain a unit. Section 28 of the Act provides that a tenant is entitled to quiet enjoyment including freedom from unreasonable disturbance. Section 7 of the Act provides that where a landlord does not comply with the Act, the landlord must compensate the other for damage or loss that results. In a claim for damage or loss under the Act, regulation or tenancy agreement, the party claiming costs for the damage or loss must prove, inter alia, that the damage or loss claimed was caused by the actions or neglect of the responding party and that costs for the damage or loss have been incurred or established.

Considering the Landlord's evidence that the problems with the running water was caused by the City and accepting that the Landlord did send a plumber, I find that Landlord reasonably responded to the repairs and that the Landlord did not breach any obligation to the Tenant in responding to repair requirements. I therefore dismiss this part of the Tenant's claim.

Given the Landlord's admission that to be present at the upper tenants' unit during a night of partying would put the Landlord in danger, and considering the evidence of occurrences provided by the Tenant, I find that the Tenant has established on a balance of probabilities that the Tenant experienced noise and loss of security during the tenancy. Noting the Landlord's admission that despite a fixed term tenancy, the Landlord was agreeable to the Tenants move with appropriate notice, I find that this agreeability on the part of the Landlord supports that a significant loss of quiet enjoyment was experienced by the Tenants. While the Landlord argues that appropriate measures were taken to address the Tenant's loss, I find that the measures taken were lacking in relation to the significance of the disturbance. As the Tenant has not provided invoices of costs to relocate but considering the merit of the Tenant's claim, I find that the Tenant has established a monetary entitlement to compensation in the global amount of **\$300.00**. The total entitlement of the Tenant is **\$1,000.00**.

Conclusion

I Grant the Tenant an Order under Section 67 of the Act for the amount of **\$1,000.00**. If necessary, this order may be filed 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 Act.

Dated: March 2, 2012.

Residential Tenancy Branch