



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPB, MND, MNDC, MNSD, FF

Introduction

This matter proceeded by way of a conference call hearing, pursuant to the *Residential Tenancy Act* (the “Act”), and dealt with cross Applications for Dispute Resolution by the Landlord and Tenants. The Landlord’s Application requested an order of possession for breach of the tenancy agreement, a monetary order for damage to the unit, site or property, compensation for damage or loss, and recovery of the filing fee. The Tenants’ Application requested a monetary order for the security deposit and the filing fee.

The Tenants provided affirmed testimony that they served the Landlord by registered mail with the Application for Dispute Resolution and Notice of Hearing package on January 16, 2012. The Tenants provided copies of the Canada Post receipt and registered mail tracking number into evidence.

I find that the Landlord was served the Application and Notice of Hearing in accordance with section 89 of the Residential Tenancy Act (the “Act”).

The Landlord did not participate in the conference call hearing. The Tenants were given full opportunity to be heard, to present evidence and to make submissions.

Preliminary Matter(s)

The Landlord made a cross application for dispute resolution, however did not attend the hearing. This matter was set for hearing by telephone conference call at 9:30 A.M. on February 28, 2012 and the only participants who called into the hearing were the Tenants. Therefore, as the Landlord did not attend the hearing and the Tenants appeared and were ready to proceed, I dismiss the Landlord’s Application.

The hearing proceeded and only the Tenants’ Application was heard.

Issue(s) to be Decided

Has there been a breach of Section 38 of the Act by the Landlord?

Background and Evidence

The Tenants testified that they paid a security deposit of \$1,350.00 when the tenancy commenced in May 2010. The Tenants stated that the monthly rent was \$2,700.00 per month. The Tenants stated that the tenancy ended on November 30, 2011. The Tenants provided a copy of the tenancy agreement into evidence. The Tenants are seeking return of the security deposit in accordance with the Act.

The Tenants stated the Landlord ended their tenancy by providing verbal notice on October 12, 2011 that the Landlord's family was moving into the rental unit for December 01, 2011. The Tenants stated that they were not at the rental unit to receive a written notice as they were travelling in India at the time, so the Landlord's agent called them on their cellular phone to provide the verbal notice. The Tenants stated that the Landlord's agent confirmed the notice in writing through email with the Tenants on October 14 and 15, 2011. The Tenants provided a copy of the emails they received regarding the ending of the tenancy. The Tenants stated that when they returned from their trip abroad they began to look for a place to live. The Tenants stated that they heard from the Landlord's agent on November 23, 2011 that the Landlord had changed their mind and no longer needed the rental unit for their family use, however, the Tenants advised them that it was too late to retract the notice now as the Tenants were moving as required. The Tenants provided into evidence a copy of the text messages they received from the agent.

The Tenants stated that they move out of the rental unit on November 30, 2011 and met with the Landlord's agent at the rental unit on December 01, 2011 to request return of their security deposit. The Tenants stated that they provided the Landlord their forwarding address in writing on December 14, 2011. The Tenants stated that no formal move in or move out inspections were done, rather informal walkthroughs were done with the Tenants. The Tenants stated that they received no documentation or any written reports about the condition of the rental unit in relation to their tenancy. The Tenants stated that they did authorize the Landlord to keep any of their security deposit. The Tenants stated that the security deposit was not returned to them. The Tenants filed for dispute resolution on January 11, 2012 and they were provided a Notice of Hearing package on January 12, 2012.

The Tenants are seeking return of the security deposit of \$1,350.00 and the filing fee.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find that the Landlord is in breach of the Act.

The Tenants provided a copy of the tenancy agreement which identifies the \$1,350.00 security deposit. I accept the Tenants' testimony that they provided their forwarding address to the Landlord in writing on December 14, 2011. There was no evidence showing that the Landlord had returned the security deposit within 15 days of receipt of the forwarding address of the Tenants. Rather the evidence supports that the Landlord filed an application for dispute resolution December 14, 2011. As stated in the preliminary findings, the Landlord's application is dismissed.

There was no evidence to show that the Tenant had agreed, in writing, that the Landlord could retain any portion of the security deposit or pet damage deposit.

When a Landlord fails to properly complete a condition inspection report, the Landlord's claim against the security deposit for damage to the property is extinguished. Because the Landlord in this case did not carry out move-in or move-out inspections or complete condition inspection reports, as required by section 23 and 35 of the Act, they lost their right to claim the security deposit and pet damage deposit for damage to the property. The Landlord was therefore required to return the security deposit and pet damage deposit to the Tenant within 15 days of the later of either the tenancy ending or having received the Tenant's forwarding address in writing.

I find that the Landlord's right to claim against the security deposit was extinguished, and they failed to return the Tenants' security deposit within 15 days of having received the Tenants' forwarding address. As a result, section 38 of the Act requires that the Landlord pay the Tenants double the amount of the deposits for a total of \$2,700.00 (\$1350.00 x 2). As a result, I grant the Tenants a monetary order for \$2,700.00.

As the Tenants have succeeded in their Application, I find they are entitled to recover their \$50.00 filing fee for this Application. As a result, the Tenants are entitled to a monetary order against the Landlord in the total amount of \$2,750.00.

Conclusion

The Landlord's application is dismissed.

Having made the above findings, I must order, pursuant to section 38 and 67 of the Act, that the Landlord pay the Tenants the sum of \$2,750.00, comprised of double the security deposit (\$1350.00 x 2) and the \$50.00 filing fee.

The Tenants are granted a formal monetary order for **\$2,750.00** and the Landlord must be served with a copy of this order as soon as possible. Should the Landlord fail to comply with this order, the order may be filed in the Small Claims division of the Provincial Court and enforced as an order of that court.

The order is attached to the Tenants' copy of this decision.

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: March 12, 2012.

Residential Tenancy Branch