



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MNSD, FF

Introduction

This hearing dealt with the tenants' application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- authorization to obtain a return of all or a portion of their security deposit pursuant to section 38; and
- authorization to recover their filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions and to cross-examine one another.

The parties agreed that in mid-January 2012, the landlord made an oral request to the tenants to vacate the rental unit. They agreed that on February 1, 2012, the landlord converted this oral request to a handwritten 2 Month Notice to end this tenancy for landlord use of the property. This notice was entered into written evidence by both parties. Since section 52(e) of the *Act* requires a landlord to provide a notice to end tenancy using the approved Residential Tenancy Branch forms, I advised the parties that I find neither of the landlord's notices to end tenancy were issued in accordance with the *Act*.

On February 19, 2012, the tenants handed the landlord their notice to end this tenancy by March 1, 2012. Although this was a valid notice to end tenancy, I noted that the tenants might still be subject to a monetary claim for the tenant's loss of rent for March 2012 if such a loss could be proven. This situation occurred because the tenants ended their tenancy prior to April 1, 2012, the earliest date that they could legally end their periodic tenancy, based on my decision that the landlord's notices to end tenancy had no legal effect.

The landlord confirmed that the male tenant (the tenant) handed her a copy of the tenants' dispute resolution hearing package on March 22, 2012. I am satisfied that the

tenants served this package and the parties served their evidence packages to one another in accordance with the *Act*.

Issues(s) to be Decided

Are the tenants entitled to obtain a return of double their security deposit or any portion thereof from the landlord for the landlord's alleged contravention of section 38 of the *Act*? Are the tenants entitled to a monetary award from the landlord? Are the tenants entitled to recover their filing fee from the landlord?

Background and Evidence

This periodic tenancy commencing on May 1, 2011 ended on March 1, 2012 when the tenants vacated the rental premises. In accordance with the parties' oral rental agreement, monthly rent during this tenancy was set at \$1,000.00, payable in advance on the first of each month. The tenants were also responsible for 2/3 of the utility charges for this rental property. The landlord continues to hold the tenants' \$500.00 security deposit.

Although the tenants provided the landlord with their forwarding address in writing in a February 19, 2012 letter entered into written evidence by the landlord, the tenant testified that the tenants mistakenly wrote the wrong forwarding address in the February 19, 2012 letter. The landlord entered into written evidence the envelope containing a cheque sent to the tenants that was returned as undeliverable by Canada Post

The tenants applied for a monetary Order of \$5,000.00. Of this amount, the tenants requested:

- \$1,000.00 for the return of double their security deposit;
- \$1,000.00 for compensation they claimed the landlord owed them for issuing them a 2 Month Notice for landlord use of the property; and
- \$3,000.00 for their loss of quiet enjoyment during this tenancy.

The only written evidence before me with respect to the tenants' claim for loss of quiet enjoyment was their May 15, 2012 letter itemizing their concerns and a February 1, 2012 letter sent to the landlord on the same day they received the landlord's handwritten notice to end this tenancy.

Analysis

Pursuant to section 63 of the *Act*, the dispute resolution officer may assist the parties to settle their dispute and if the parties settle their dispute during the dispute resolution proceedings, the settlement may be recorded in the form of a decision or an order.

During the hearing, the parties discussed the issues between them, engaged in a conversation, turned their minds to compromise and achieved a resolution of their dispute.

Both parties agreed to resolve all disputes arising out of this tenancy under the following terms:

1. Both parties agreed that all monetary issues in dispute arising out of this tenancy will be resolved by the landlord's payment of \$216.89 to the tenants forthwith to the mailing address provided by the tenants in their application for dispute resolution.
2. Both parties agreed that this settlement agreement constituted a final and binding resolution of all issues in dispute arising out of this tenancy.
3. Both parties agreed to take no further action against one another with respect to this residential tenancy.

Conclusion

In order to implement the above settlement reached between the parties, I issue a monetary Order in the tenants' favour in the amount of \$216.89. I deliver this Order to the tenants in support of the above agreement for use **only** in the event that the landlord does not abide by the terms of the above settlement. The tenants are provided with these Orders in the above terms and the landlord must be served with a copy of these Orders as soon as possible after a failure to comply with the terms of the above settlement agreement. Should the landlord fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders 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 *Residential Tenancy Act*.

Dated: May 25, 2012

Residential Tenancy Branch