



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FF

Introduction

This hearing dealt with the tenants' Application for Dispute Resolution seeking a monetary order.

The hearing was conducted via teleconference and was attended by both tenants and the landlord.

Issue(s) to be Decided

The issues to be decided are whether the tenants are entitled to a monetary order for compensation for receiving a Notice to End Tenancy for Landlord's Use of Property; for return of the security deposit and to recover the filing fee from the landlord for the cost of the Application for Dispute Resolution, pursuant to Sections 38, 51, 67, and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The tenants submitted the following documents into evidence:

- A copy of a tenancy agreement signed by the parties on April 21, 2009 for a tenancy beginning on May 1, 2009 for the monthly rent of \$850.00 due on the last day of each month with a security deposit of \$425.00 paid on April 21, 2009;
- A copy of a handwritten letter dated May 31, 2011 from the landlord to the tenant stating the landlord "will be taking over [dispute address] on August 01-2011 as my personal residence." This is a letter of eviction with 2 months notice to move out;
- A copy of a letter from the tenants to the landlord dated March 7, 2012 providing the landlord with the tenant's forwarding address and asking to have the security deposit and compensation under Section 51 of the *Act* and registered mail receipts confirming this letter was served to the landlord on March 8, 2012; and
- A copy of an undated letter from the landlord to the tenants advising them that she is deducting from the security deposit for a number of reasons and that the cost of the mentioned repairs was more than the security deposit held.

The landlord testified that once the tenants had vacated the rental unit and she had moved in she discovered that there was some damage to the fridge/crisper; scratches on the front door and the seal; there was a broken light in the bathroom; a curtain rod was

broken; grout in the kitchen was dirty; and problems with lawn in both the front and back of the residential property. There was an additional issue in that the tenancy agreement stipulated only one small dog and the tenants had an additional larger dog and a cat.

The landlord testified that she did not submit an Application for Dispute Resolution seeking to claim against the security deposit. She also testified that she did not provide the tenants with any compensation for ending the tenancy for her own use; nor did the tenants ask for it.

Analysis

Section 38(1) of the *Act* stipulates that a landlord must, within 15 days of the end of the tenancy and receipt of the tenant's forwarding address, either return the security deposit or file an Application for Dispute Resolution to claim against the security deposit. Section 38(6) stipulates that should the landlord fail to comply with Section 38(1) the landlord must pay the tenant double the security deposit.

I accept the tenants have served the landlord with their forwarding address in writing at the very latest on March 8, 2012 and in accordance with Section 90 of the *Act*, I find the landlord received the forwarding address by March 14, 2012. As such, the landlord had until March 29, 2012 to return all of the security deposit to the tenants or file an Application for Dispute Resolution to claim against the deposit.

I note that this finding does not affect the landlord's ability to file an Application for Dispute Resolution seeking compensation for damages related to the expenses she may have incurred as a result of the condition of the rental unit at the end of the tenancy.

I accept, from the tenants' testimony and evidence, the landlord failed to return any portion of the security deposit and based on the landlord's testimony that she did not file an Application for Dispute Resolution, I find the landlord has failed to comply with Section 38(1) and the tenants are therefore entitled to double the security deposit.

Section 49 of the *Act* allows a landlord to end a tenancy if the landlord or a close family member of the landlord intend in good faith to occupy the rental unit. Section 51 stipulates that if a tenant receives a notice to end a tenancy under Section 49 the tenant is entitled to receive from the landlord an amount that is equivalent to one month's rent.

As per the landlord's testimony I accept the landlord failed to provide the tenants with compensation as outlined in Section 51.

Conclusion

I find the tenants are entitled to monetary compensation pursuant to Section 67 and I grant a monetary order in the amount of **\$1,750.00** comprised of \$850.00 compensation for ending the tenancy for landlord's use; \$850.00 for double the amount of the security deposit and the \$50.00 fee paid by the tenants for this application.

This order must be served on the landlord. If the landlord fails to comply with this order the tenants may file the order in the Provincial Court (Small Claims) and be 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 *Residential Tenancy Act*.

Dated: September 13, 2012.

Residential Tenancy Branch