



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MNSD, FF, O

Introduction

This hearing was convened by way of conference call in response to the tenants application a Monetary Order for the return of the tenants security deposit; for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement; and to recover the filing fee from the landlords for the cost of this application.

One of the tenants and the landlord's agent attended the conference call hearing, gave sworn testimony and were given the opportunity to cross examine each other on their evidence. The landlord and tenant provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. All evidence and testimony of the parties has been reviewed and are considered in this decision.

Preliminary Issues

The landlord's agent attending the hearing states that the other agent named on the tenants application is no longer employed by the landlord. This agents name will therefore be removed from any Orders.

Issue(s) to be Decided

- Are the tenants entitled to a Monetary Order to recover the security deposit?
- Are the tenants entitled to a Monetary Order for money owed or compensation for damage or loss?

Background and Evidence

The parties agree that this tenancy started on August 1, 2004. This tenancy started as a fixed term for six months and reverted to a month-to-month tenancy at the end of the fixed term. The tenancy ended on May 29, 2012. The tenants paid a monthly rent of \$2,145.00 by the end of the tenancy and rent was due on the first day of each month in advance. The tenants paid a security deposit of \$950.00 on July 13, 2004. The parties agree that they attended a move in and a move out condition inspection of the rental unit and the tenants provided a forwarding address in writing to the landlords on May 29, 2012.

The tenant attending testifies that the landlord deducted \$150.00 for a lost garage remote. The tenant testifies that they call the Strata and were told the replacement remote would be \$50.00. The tenant testifies that the landlords returned the sum of \$858.66 to the tenants by mail and the check is dated June 14, 2012. The tenant testifies that they did not give the landlord permission to keep any of the security deposit and they do not agree to any deductions being made from the security deposit. The tenants seek to recover double the security deposit to the sum of \$1,900.00 less the amount the landlord has returned.

The tenant testifies that in 2009 the main bathroom in the unit had a leak in the shower which rendered the shower unusable. The tenant testifies that despite informing the landlord of this, the leak continued for six months and the tenants were unable to use the shower for that length of time. The tenant testifies that the landlord simply said it was an old building and they had to expect some repairs. The tenant testifies however that this is not acceptable and the landlord should have made repairs in a timely manner. The tenant testifies that they spoke about this again to one of the landlords agent's in April 2010 and discussed compensation however they received no compensation from the landlord. The tenant seeks to recover the sum of \$410.00 a month for the six months they were without a shower. The tenant testifies that they did have another shower in the unit but the never used that shower as in 2006 there was a leak coming from the unit upstairs for the whole year which was not repaired until 2007. The tenant testifies that they use this area as a storage room.

The tenant testifies that the washing machine did not work for three weeks and five days. The tenant states they called the landlord and sent them e-mails about this faulty washing machine however it took the landlord three weeks and five days to replace the washing machine. The tenant seeks to recover the sum of \$410.00 for the month that they were without the washing machine.

The tenant testifies that they decided not to file an application when they without a shower or washing machine as they wanted to move out of the rental unit and the landlord's agent had told the tenants that he would look at compensation when they moved out.

The landlord's agent testifies that it is their position that they tried to contact the tenants to get access to the rental unit to affect the repair however the tenant did not respond to messages left. The landlord's agent testifies that she was not aware that they could have given the tenants 24 hours written notice to enter the rental unit. The landlord's agent states that if this problem was so bad the tenants could have filed an application seeking an order for the landlord to make repairs. The landlord's agent states that the tenants also had use of another shower in the unit which they opted not to use.

The landlord's agent testifies that they could not contact the tenants to arrange a time to look at the washing machine and the tenants did not get back to the landlords after messages were left for them.

The tenant argues that the landlords did not attempt to contact them. The tenant testifies that his mother does not work and is home during the day and that he only works part time. There was ample opportunity for the landlords to contact the tenants or to come to the tenants unit and the landlords failed to do so. The tenant testifies again that they did not file because the other landlords agent and the tenant came to an agreement to deal with the compensation issue when the tenants moved out.

The tenant testifies that there was another issue in the unit with a fireplace that never works during the tenancy. Again the landlords were supposed to repair this but were unresponsive to the tenants' complaints. The tenant has provided evidence that the

landlords agent attending this hearing acknowledged that this fireplace was not working on November 30, 2010. The tenants do not seek compensation for this fireplace. The tenant states he is only mentioning it to show that the landlords were unresponsive to the tenants complaints about repairs.

Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties. The *Residential Tenancy Act (Act)* states that, if the landlord does not either return the security deposit or apply for dispute resolution within 15 days after the later of the date the tenancy ends or the date the landlord receives the tenants forwarding address in writing, the landlord must pay the tenant double the amount of security deposit.

The landlord has not returned all of the tenant's security deposit or applied for dispute resolution to keep any or all of tenant's security deposit and the time limit in which to apply is now past.

This tenancy ended on May 29, 2012 and the landlord had a forwarding address on that date and there is no evidence to show that the tenant's right to the return of the deposit has been extinguished.

Therefore even though the tenants have not applied for double the whole amount of their security deposit on their application but only double the unpaid portion, I am required to order that the landlord must pay double the amount of the security deposit to the tenants less the amount already paid. Consequently, the tenants are entitled to recover the sum of \$1,041.34.

With regard to the tenants claim for compensation for the loss of use of the shower; I refer the parties to section 32 of the *Act* which states:

32 (1) A landlord must provide and maintain residential property in a state of decoration and repair that

(a) complies with the health, safety and housing standards required by law, and

(b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

The landlord's agent argues that they attempted to contact the tenant about repairs but the tenant did not return the calls. The tenants dispute this and states that they were in for the majority of the time I would have been available if the landlord had attempted to contact them. The landlords also argue that the tenants did have the use of another shower in the unit. The tenant argues that this shower room was used for storage.

The tenants have applied to reduce their rent by 20 percent a month to the sum of \$410.00 for six months of the tenancy that they were without a shower. The tenant is however required to attempt to mitigate their loss and I find that the tenants did have the use of another shower in the unit even if they opted not to use this. However, this does not release the landlords from the obligations that repairs are made in a timely manner. Consequently, I limit tenants claim to \$205.00 a month for the six months they were without a shower to the sum of \$1,230.00.

I further find that the landlords did not repair the tenant's washing machine within a timely manner leaving the tenants without the use of this machine for three weeks and five days. Consequently, I uphold the tenants claim to recover the sum of \$410.00 for the time they were without the use of the washing machine.

As the tenants have been largely successful with their claim I find the tenants are entitled to recover their \$50.00 filing fee from the landlords pursuant to s. 72(1) of the *Act*. The tenants are entitled to a Monetary Order pursuant to section 67 of the *Act* as follows:

Double the security deposit	\$1,900.00
Compensation for shower	\$1,230.00
Compensation for washing machine	\$410.00

Filing fee	\$50.00
Less amount of security deposit returned	[-\$858.66]
Total amount due to the tenants	\$2,731.34

Conclusion

I HEREBY FIND in partial favor of the tenants' monetary claim. A copy of the tenants' decision will be accompanied by a Monetary Order for **\$2,731.34**. The order must be served on the respondent and is enforceable through the Provincial Court 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: October 19, 2012.

Residential Tenancy Branch