



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDC

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 double security deposit - Section 38; and
2. Other.

I accept the Tenants’ evidence that the Landlord was served with the application for dispute resolution and notice of hearing by registered mail in accordance with Section 89 of 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

Although not identified under “Nature of the Dispute”, it is noted that the application includes a request for compensation in the details of the dispute. I find this detail to be sufficient to establish that a claim for compensation has been made in the application.

Issue(s) to be Decided

Are the Tenants entitled to the monetary amounts claimed?

Are the Tenants entitled to recovery of the filing fee?

Background and Evidence

The tenancy started on July 30, 2012 and ended on September 30, 2012. Rent of \$950.00 was payable monthly. At the outset of the tenancy, the Landlord collected \$475.00 as a security deposit and \$200.00 as a pet deposit. No move-in or move-out

inspection was offered by the Landlord. The Tenants provided their forwarding address in writing to the Landlord on a visit by the Landlord to the unit on September 7, 2012 and by mail.

The Landlord did not provide the Tenants with keys to the unit throughout the tenancy and is the reason the Tenants ended the tenancy. The Tenants requested keys repeatedly throughout the tenancy but the Landlord failed to provide a set. On August 10, 2012, the Tenants gave their notice to end the tenancy for September 30, 2012.

One of the Tenants has a medical disability requiring frequent medical appointments and the Tenants have 3 small children. As the Tenants had no keys to the unit, they had to spend significant time and undergo significant inconvenience in arranging for a person to be in the unit while attending medical appointments or taking the children on outings during the summer months. The Tenants did not attempt to change the locks themselves as they believed that to be an illegal act and although they did call the Residential Tenancy Branch for information, as they were moving out of the unit they felt it would no longer be an issue. The Tenants suffered anxiety and stress as a result of not having the ability to leave their unit secured by keys. The Tenants did not suffer any financial losses as a result of not having the keys.

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 the end of the tenancy, I find that the Landlord is required to pay the Tenants double the combined security and pet deposit in the amount of **\$1,350.00**.

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, that reasonable steps were taken by the claiming party to minimize or mitigate the costs claimed, and that costs for the damage or loss have been incurred or established. Based on the undisputed evidence of the Tenant, I find that the Landlord failed to provide a set of keys to the Tenants throughout the tenancy causing the Tenants a loss of security and therefore a loss of quiet enjoyment of the unit. By ending the tenancy, I find that the Tenants acted to mitigate their loss. As the Tenants did not suffer any financial losses, and noting that the Tenants continued to have use of the unit, I find that the claim for compensation of two months' rent to be unreasonably high. I therefore find the Tenants entitled only to nominal compensation in the amount of **\$100.00** for each of two months of inconvenience and worry for a total monetary entitlement of **\$1,550.00**.

Conclusion

I grant the Tenant an order under Section 67 of the Act for the amount of **\$1,550.00**. 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 *Residential Tenancy Act*.

Dated: January 23, 2013

Residential Tenancy Branch

