



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MNSD

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 security deposit - Section 38;
2. A Monetary Order for the cost of emergency repairs – Section 67; and
3. An Order to recover the filing fee for this application - Section 72.

The Tenants and Landlord were each given full opportunity to be heard, to present evidence and to make submissions.

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 began on August 1, 2004 and ended on November 30, 2012. At the outset of the tenancy, the Landlord collected a security deposit from the Tenants in the amount of \$375.00. The Parties mutually conducted a move-in and move-out inspection however no inspection report was completed and provided to the Tenants. The Tenants provided the forwarding address in writing on October 26, 2012.

The Landlord did not file an application for dispute resolution to make a claim against the security deposit and states that the Tenants failed to pay rent for November 2012.

The Tenants stated at the hearing that return of double the security deposit was not being waived. The Landlord does not dispute the monetary amounts claimed for chimney cleaning, taping of electrical wires, removal and installation of stove, costs for replacement of a washer belt and labour, replacing plug and bathroom switch in the total amount of \$228.00.

The Tenants state that in 2010 the Landlord was told that branches of a fir tree were interfering with a power line and television reception. The Landlord does not dispute that the Tenants informed him of the matter and although he had informed the Tenants that he would inspect the tree, the Landlord did not come to look at the trees and states that he would have left the issue with the power company. The Tenants state that in the spring of 2012, snow caused the tree branches to fall on the lines so the Tenants had the limbs removed at their own cost. The Tenants claim \$150.00 paid to a third party for the cutting of the branches and \$120.00 for their own labour to dispose of the branches.

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 receipt of the Tenant's forwarding address, I find that the Landlord is required to pay the Tenants double the security deposit in the amount of **\$750.00** plus **\$13.29** interest on the original amount.

Given the agreement of the Landlord, I also find that the Tenants are entitled to the monetary amount of **\$228.00** for repairs.

I accept as reasonable that branches touching power lines are a hazard that requires a landlord's immediate attention. As the Landlord agreed that in 2011 the Tenants had informed him of the problem with the branches touching power lines but failed to inspect the situation, and accepting that the Tenants incurred service and labour costs for the removal of the branches, I find that the Tenants are entitled **\$170.00**.

As the application has been successful, I also find that the Tenants are entitled to recovery of the **\$50.00** filing fee for a total monetary entitlement of **\$1,211.29**.

Conclusion

I Grant the Tenant an Order under Section 67 of the Act for the amount of **\$1,211.29**. 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 Act.

Dated: January 28, 2013

Residential Tenancy Branch

