



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD

Introduction

This hearing dealt with an application made by the tenant seeking a monetary order and an order for the return of double the security deposit. The tenant participated in the conference call hearing but the landlord did not. The landlord presented evidence that the tenants were served with the application for dispute resolution and notice of hearing by registered mail on January 3, 2013. I found that the tenants had been properly served with notice of the landlord's claim and the date and time of the hearing and the hearing proceeded in their absence. The tenant gave affirmed evidence.

Issues to be Decided

Are the tenants entitled to a monetary order?

Are the tenants entitled to the return of double the security deposit?

Background and Evidence

The tenancy began on or about August 2010. Rent in the amount of \$880.00 is payable in advance on the first day of each month. At the outset of the tenancy the landlord collected from the tenant a security deposit in the amount of \$440.00.

The tenant's advocate gave the following testimony:

The local city authorities evacuated the tenants from the subject building on January 6, 2011. The landlord had not complied with fire by-laws and the building was deemed unsafe. As of today's hearing the building still remains vacate. The tenants provided

their forwarding address in writing with the assistance of the advocate on February 21, 2011. Multiple attempts to contact the landlord and subsequently the “receiver” were unsuccessful. The tenant’s paid their rent early on the morning of January 6, 2011 only to be evacuated a few hours later. The tenants are seeking the return of double their \$440.00 security deposit X 2= \$880.00 plus their \$880.00 rent for a grand total of \$1760.00.

Analysis

Given the evidence before me, in the absence of any evidence from the Landlord who did not appear despite being properly served with notice of this proceeding, I accept the version of events as discussed by the Tenant and their advocate and corroborated by their evidence.

Section 38 of the Act provides that within 15 days after the later of the date of the tenancy ends, and the date the landlord receives the tenants forwarding address in writing, the landlord must repay the security deposit or make an application for dispute resolution claiming against the security deposit. When 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 tenants forwarding address, I find that the tenants are entitled to return of double the security deposit in the amount of \$880.00.

To be successful in a claim for compensation for damage or loss the applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
3. The value of the damage or loss; **and**
4. Steps taken, if any, to mitigate the damage or loss.

Section 32 of the *Act* requires a landlord to provide and maintain residential property in a state of repair that complies with the health, safety and housing standards required by law. I accept, based on the evacuation order submitted into evidence that the landlord failed to comply with Section 32.

As the tenant paid rent for the month January 2011 and then was unable to live in the unit after the evacuation order was issued as a direct result of the landlord's failure to comply with Section 32, I find the tenant suffered a loss as a result of the landlord's violation of Section 32. I find the tenant has established that value to be that of the value of rent in the tenancy agreement. The tenant is entitled to \$880.00.

I grant the tenant an order under section 67 for the balance due of \$1760.00. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

Conclusion

The tenant is granted a monetary order for \$1760.00.

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: March 25, 2013

Residential Tenancy Branch

