



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MNSD, FF

Introduction

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

The hearing was conducted via teleconference and was attended by the 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 double the amount of the security deposit; for compensation owed under the *Residential Tenancy Act (Act)* 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

Both parties have provided, as evidence, a copy of a tenancy agreement signed by the parties on May 2, 2010 for a 1 year and 1 day fixed term tenancy agreement beginning on May 7, 2010 that converted to a month to month tenancy on May 8, 2011 for a monthly rent of \$975.00 due on the 7th of each month with a security deposit of \$450.00 paid.

The tenants also provided a copy of a 2 Month Notice to End Tenancy for Landlord's Use of Property issued by the landlord on August 29, 2012 with an effective date of October 31, 2012 citing the rental unit will be occupied by the landlord or the landlord's spouse or a close family member.

The tenants submit a copy of a letter showing they provided the landlord with their forwarding address in writing on September 21, 2012. The landlord submitted a copy of her Application for Dispute Resolution dated October 26, 2012 seeking to retain the deposit.

Based on that Application a hearing was conducted on January 8, 2013 at which time the landlord did not attend and her Application was dismissed. The landlord submits that she had been unable to attend the hearing due to an emergency at the veterinary clinic where she works. The landlord testified the emergency was a caesarean section was required on a cow.

The landlord has provided documentation of this occurrence. The landlord further submits that at the time she then decided she would not pursue the claim and immediately returned the deposit in full to the tenants. The tenants have provided a copy of a money order in the amount of \$450.00 dated January 15, 2013 from the landlord.

The tenants submit that the landlord has failed to use the rental unit for the stated purpose and to support this claim they have provided written statements from some neighbours who indicate that no one has moved into the rental unit or "used the property since the tenants have moved out.

The landlord submits that as the septic system has not been working since the tenants misused it and because they had to complete repairs to the rental unit prior to them moving into the rental unit they have not, at the time of this hearing, yet moved in. The tenants submit that they had problems with the septic system right from the start of the tenancy and it results for an inadequate system impacted by high water levels on the property.

The landlord testified that they are completing renovations on the rental unit so that they can move in to the unit however these renovations are not yet complete and they have been advised to not use the septic system until it dries out, however this cannot occurred until later in the spring and they plan to move into the unit in June 2013.

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.

Based on the testimony of both parties that the tenants vacated the rental unit on October 20, 2012 I find the landlord had until November 4, 2012 to submit an Application for Dispute Resolution seeking to claim against the deposit. As the landlord's Application was received on October 26, 2012 I find the landlord has fulfilled her obligations under Section 38(1) and the tenants are not entitled to return of double the security deposit.

In reaching this decision, I also acknowledge and accept that the landlord had valid reasons that are substantiated by her evidence submitted that she was unable to attend

the hearing for reasons beyond her control. As the landlord has returned the security deposit in full and she did so in a reasonable time frame after the January 8, 2013 hearing I find the landlord has met all of her obligations under Section 38 for returning the deposit.

To be successful in a claim for compensation the applicant has the burden to provide sufficient evidence to establish the obligation for the compensation exists in the *Act*.

Section 51 of the *Act* states a tenant who receives a notice to end tenancy under Section 49 (landlord's use of property) is entitled to receive from the landlord compensation equivalent to one's month rent payable under the tenancy agreement. The tenants acknowledge receipt of this compensation.

In addition if the landlord fails to take reasonable steps to use the rental unit for the stated purpose within a reasonable period after the effective date of the notice the landlord must pay the tenant an amount that is the equivalent of double the monthly rent amount.

While the tenants have submitted written statements from neighbours indicating they have not observed anyone living in the rental unit, I find the tenants have failed to establish the landlord is not occupying the rental unit. Occupying the rental unit does not require, specifically, that the landlord to be living in the rental unit and based on the evidence and testimony submitted by the landlord, I am satisfied that the landlord is taking reasonable steps to prepare the rental unit for their own use.

Conclusion

For the above noted reasons, I dismiss the tenants' Application in its entirety. In regard to the portion of the tenants' Application seeking compensation for the landlord failing to use the rental unit for the stated purpose, I grant the tenants leave to reapply should the landlord fail to use the rental unit for that purpose after the repairs to the unit and the septic system are completed.

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: April 10, 2013

Residential Tenancy Branch

