



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes AAT, MNDC, MNSD, FF

Introduction

This hearing dealt with an application by the tenants for a monetary order, an order compelling the landlord to return double their security deposit and an order compelling the landlord to allow access to the tenant and the tenant's guests. Both parties participated in the conference call hearing and confirmed that they had received each other's documentary evidence.

At the hearing, the parties agreed that the tenancy ended on or about July 29, 2013. As the tenancy has ended, I consider the claim for an order compelling the landlord to allow access to the tenant and the tenant's guests to either have been filed in error or withdrawn.

The landlord submitted evidence outlining a monetary claim against the tenants, believing that by doing so, she was making a claim for a monetary order. At the hearing, I advised the landlord that in order to place a claim before this tribunal, she must file an application for dispute resolution.

Issue to be Decided

Are the tenants entitled to the orders sought?

Background and Evidence

The parties agreed that the tenancy began on June 28, 2013 and ended on or about July 29, 2013. They further agreed that the tenants paid a \$1,000.00 security deposit on June 12, 2013.

Conflict between the parties began almost immediately when the tenants moved into the rental unit, which is on the upper floor of a home in which the landlord occupies the lower floor. The tenants claimed that the landlord unduly harassed them, complaining

about insignificant issues and interfering with their quiet enjoyment while the landlord claimed that the tenants breached the tenancy agreement in several ways. The parties agreed that on June 30, the landlord served on the tenants a one month notice to end tenancy for cause. The tenants testified that they did not dispute the notice because they were already planning to end the tenancy.

The tenants seek an award of \$1,800.00 to compensate them for moving expenses as they should not have incurred the cost of moving twice within just over one month.

The tenants claimed that on July 28, they personally served the landlord with their written forwarding address. They claimed that this exchange took place in the driveway of the residential property and they provided a witness statement attesting to service. The tenants testified that they had contacted the Residential Tenancy Branch for direction and were following the advice given.

The landlord denied having received the tenants' forwarding address and testified that she did not return the security deposit because she did not receive the address. The landlord submitted copies of correspondence with the Residential Tenancy Branch dated July 29 and 30 and argued that she would not have told the Branch that she had not received the security deposit if she had in fact received it on July 28.

Analysis

Section 38(1) of the Act provides that within 15 days of the later of the day the tenancy ends and the day the landlord receives the tenants' forwarding address in writing, the landlord must either return the security deposit in full or file an application with the Residential Tenancy Branch to retain the deposit. Although the landlord denied having received the forwarding address in writing, I find it more likely than not that she did in fact receive the address on July 28 when the tenants personally handed it to her. The fact that both tenants had a specific recollection of the event and that they provided a witness statement has persuaded me that the document was given to the landlord. It may be that she discarded the document without reading it, but I am satisfied on the balance of probabilities that it was received.

Section 38(6) provides that if the landlord does not comply with section 38(1), the landlord must pay the tenants double the amount of the security deposit. I therefore find that the landlord is liable for \$2,000.00 and I order the landlord to pay the tenants this sum.

In order to succeed in their claim for moving expenses, the tenants must prove that they suffered a loss as the result of the landlord's breach of the Act or tenancy agreement.

While I accept that the tenants did not intend to move within one month of the date they had taken up residency, I am unable to find that the move was due to the landlord's breach of the Act or the agreement. There is no evidence before me showing that the tenants had advised the landlord that they could not continue the tenancy due to the landlord's actions, nor is there any evidence to corroborate that the tenants were looking for other accommodation prior to having been served with the notice to end tenancy for cause (the "Notice"). I find that the tenants accepted and even welcomed the Notice as they were finding their relationship with the landlord strained, but I am unable to find that their choice to move arose from the landlord's breach. I therefore dismiss the claim for moving expenses.

As the tenants have been substantially successful in their claim, I find that they should recover the filing fee paid to bring their application and I award them \$50.00.

Conclusion

I grant the tenants a monetary order under section 67 for \$2,050.00 which represents double their security deposit and recovery of their filing fee. This order may be filed in the Small Claims Division of the Provincial 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: November 29, 2013

Residential Tenancy Branch

